APPENDIX

Supreme Court, U. S.
FILED
AUG 4 1976
MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1975

No. 75-1453

NEAL R. WOOLEY, individually and as
Chief of Police, Lebanon, New Hampshire,
PAUL A. DOYON, individually and as
Director of the New Hampshire State Police, and
FREDERICK N. CLARKE, JR., individually and as
Commissioner of the
New Hampshire Department of Motor Vehicles,

Appellants,

v.

GEORGE MAYNARD and MAXINE MAYNARD,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

JURISDICTIONAL STATEMENT FILED APRIL 12, 1976
PROBABLE JURISDICTION NOTED JUNE 21, 1976

IN THE

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OCTOBER TERM, 1975

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Chief of Police, Lebanon, New Hampshire.
PAUL A. DOYON, individually and as
Director of the New Hampshire State Police, and
FREDERICK N. CLARKE, JR., individually and as
Commissioner of
the New Hampshire Department of Motor Vehicles,
Appellants,

v.

GEORGE MAYNARD and MAXINE MAYNARD,

Appellees.

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CHRONOLOGICAL LIST OF

RELEVANT DOCKET ENTRIES

March 4, 1975	Complaint for Declaratory and Injunctive Relief
March 4, 1975	Motion for Temporary Restraining Order
March 7, 1975	First Amended Complaint for Declaratory and Injunctive Relief
March 7, 1975	Motion to Dismiss
March 7, 1975	Objection to Motion for Temporary Restraining Order
March 11, 1975	Temporary Restraining Order
March 14, 1975	Designation of Three-Judge Court
May 1, 1975	Stipulation of Facts
September 22, 1975	Hearing
February 9, 1976	Opinion
February 9, 1976	Judgment
February 17, 1976	Notice of Appeal to the Supreme Court of the United States

MOTION FOR TEMPORARY RESTRAINING ORDER
Filed March 4, 1975

Plaintiffs move the court to issue a Temporary Restraining Order enjoining the defendants, their agents, servants, employees and all others under their control or in active concert with them, from enforcing the provisions of RSA 262:27-c against them because they have placed tape over the words "Live Free or Die" on their automobile registration plates and to further enjoin the defendants, their agents, servants, employees and others acting in concert with them from removing said number plates from their vehicles and impounding them.

In support whereof plaintiffs aver:

1. Unless the defendants are restrained by this court, the plaintiffs will be deprived of their rights to freedom of expression and the right to be free from coerced belief under the First and Fourteenth Amendments and the equal protection of the laws guaranteed by the Fourteenth Amendment.

2. The continued enforcement of RSA 262:27-c against the defendants for taping over the words "Live Free or Die" on their registration plates will result in irreparable injury, loss and damage to the plaintiffs as more particularly appears from the verified complaint and affidavit of George Maynard, attached hereto.

3. Issuance of a Temporary Restraining Order herein will not cause undue inconvenience, loss or damage to the defendants because Mr. Maynard's registration plates plainly set forth his registration numbers and the name of the State of New Hampshire.

4. On March 3, 1975, the undersigned attorney notified Assistant Attorney General Dave Hess of his intention to seek a Temporary Restraining Order on March 4, 1975. This attorney asked Mr. Hess whether there was any possibility that the State would stipulate that Mr. Maynard could drive his car with the state motto covered until a hearing could be held on plaintiffs' motion for a preliminary injunction. Mr. Hess later called back and said that the plaintiffs would have to seek a Temporary Restraining Order in the federal court.

Dated: March 3, 1975

/s/ Richard S. Kohn
Richard S. Kohn

AFFIDAVIT OF GEORGE MAYNARD

I, GEORGE MAYNARD, having first been duly sworn, on oath depose and say:

1. I am a resident and citizen of Claremont, New Hampshire where I reside with my wife, Maxine, and my two small children.

2. I own two automobiles, a Toyota Corolla and a Plymouth Station wagon. I have registered both automobiles with the New Hampshire Department of Motor Vehicles as required by law.

3. Since 1972, the State of New Hampshire has issued registration plates to me bearing the state motto "Live Free or Die." I am opposed to this slogan on religious and political grounds. First, by religious training and belief, I believe that my "government"—Jehovah's Kingdom—offers everlasting life. It would be contrary to that belief to give up my life for the state, even if it meant living in bondage. Although I obey all laws of the State not in conflict with my conscience, this slogan is directly at odds with my deeply held religious convictions.

4. I also disagree with the motto on political grounds. I believe that life is more precious than freedom. This slogan is a "battle cry" with distinct political overtones. I have read that it was passed by the legislature in 1969 to answer critics of the Vietnam War, replacing the non-political phrase "scenic" New Hampshire to which I have no objection. My act in taping over this offensive language was to express my fundamental disagreement with the jingoistic message it contains. I should like to add that I am an honorably discharged Korean War Veteran and saw combat with the 187th Regimental Combat Team.

5. Beginning in March or April 1974, I placed tape over the motto "Live Free or Die" on the four license plates affixed to my two cars. I did not obscure the numbers or the words "New Hampshire." On November 27, 1974, while driving my Toyota in Lebanon, New Hampshire, I was issued a summons by Officer Hill of the Lebanon Police Department. At that time, he removed the front plate from the car. I was tried and convicted of misuse of plates in Lebanon District Court on December 6, 1974. Chief Neal Wooley of the Lebanon Police Dept. prose-

cuted me. I was fined $25 but the fine was suspended. Judge Lovejoy told me to "go home and behave myself."

6. On or about December 31, 1974, my wife and I drove to the Lebanon Shopping Center in the Toyota. While in the hardware store, I saw Officer Robbins of the Lebanon Police Dept. removing the remaining number plate from the car. He gave me a summons for misuse of the plates because the plate had tape over the phrase "Live Free or Die."

7. In order to get home, I fashioned a license plate out of cardboard and placed it on the car. Driving through Plainfield, Sullivan County, I was stopped by a State Trooper who told me that I couldn't drive around like that. He told me that my plates had been impounded. He gave me a summons for misuse of plates. He told me he would drop the charge if the Lebanon Police Department would drop their charges.

On January 31, 1975, I was tried and convicted in Lebanon Diatrist [sic] Court for misuse of plates. The judge sentenced me to pay a $50 fine and to serve six months in jail which was suspended. The judge also held that I would have to pay the $25 which had been previously suspended. When I advised the judge that I would not pay the fine as being against my Christian conscience, he said he was committing me to the Grafton County House of Corrections in Woodsville for fifteen days ($5 per day). They took me to jail that day. First they took me to Hanover then to the House of Corrections. Although I asked for food, they said the kitchen was closed. I didn't get anything to eat until the next day. The case in Claremont District Court for driving with cardboard plates is still pending.

8. Since my license plates had been confiscated, I applied to the Department of Motor Vehicles for commercial plates. These do not bear the State motto and seemed a good solution to the problem. That request was denied and I have been issued two new sets of number plates (SR 755 for the Toyota; SF 740 for the Plymouth) each of which bears the inscription, "Live Free or Die."

9. I am a printer by trade. I am presently unempoyed [sic] and must look for work. I am not drawing unemployment compensation. My wife works for Sarah Coventry Jewelry Company. She demonstrates jewelry through a house party plan. This involves calling on peoples' homes. My wife is paid

by commission and this is the only source of income for our family right now. Use of a car is essential to her job.

I have two cars sitting in the yard which I cannot use. The new plates must be affixed to the cars by March 1, 1975 before they can be driven. I refuse to be coerced by the State into advertising a slogan which I find morally, ethically, religiously and politically abhorrent. My alternatives are to go back to jail or to leave the state.

Dated: February 28, 1975 /s/ George Maynard
George Maynard

(Certificate of Service omitted in printing)

FIRST AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Filed March 7, 1975

I. INTRODUCTION

1. This is a complaint for declaratory and injunctive relief under 42 U.S.C. 1983. Plaintiffs seek a declaration that RSA 263:1 is unconstitutional on its face and as applied to the plaintiffs insofar as it mandates that non-commercial license plates carry the state motto, "Live Free or Die," as abridging rights guaranteed to them by the First and Fourteenth Amendments. Plaintiffs also seek a declaration that RSA 262:27-C violates the First and Fourteenth Amendments insofar as it makes it a crime to obscure the words "Live Free or Die" on number plates. Plaintiffs seek an injunction against the enforcement, operation and execution of RSA 263:1 and RSA 262:27-C and specifically seek to restrain the defendants from arresting or prosecuting them for covering over these words.

II. JURISDICTION

2. Jurisdiction is vested in the court by 28 U.S.C. Sec. 1343(3).

III.
REQUEST FOR THREE JUDGE COURT

3. Because this suit seeks interlocutory and permanent injunctive relief agaonst [sic] officers of the state in the enforcement and execution of state statutes, plaintiffs request the court to convene a three judge district court pursuant to 28 U.S.C. Sec. 2281.

IV.
PARTIES

4. Plaintiff George Maynard is a citizen of the United States and a resident of Claremont, New Hampshire.

5. Plaintiff Maxine Maynard is a citizen of the United States and a resident of Claremont, New Hampshire.

6. Defendant Neal R. Wooley is Chief of Police of Lebanon, New Hampshire. Acting under color of state law, he has prosecuted plaintiff George Maynard under RSA 262:27-C for taping over the words "Live Free or Die" on his number plates. He has publicly stated that he was instructing his men to arrest Mr. Maynard again if he persists in obscuring those words.

7. Defendant Paul A. Doyon is Director of the New Hampshire State Police. Under RSA 106-B:12, police employees are responsible for patrolling the highways, enforcing the highway traffic laws and regulations and enforcing the motor vehicle laws relative thereto. Plaintiff George Maynard has been arrested by a state trooper for a related offense under RSA 262:27-C.

8. Defendant Frederick Clark, Jr. is Commissioner of the Department of Motor Vehicles and is authorized to issue number plates. RSA 260:9. Under RSA 260:10-a and RSA 260:11-B, the Commissioner is authorized to design and issue special number plates to citizens who want their initials on their plates and to Citizens Band Operators. He has refused to issue the plaintiffs number plates without the state motto embossed on them.

V.
STATEMENT OF FACTS

9. George and Maxine Maynard are residents of Claremont, New Hampshire. They own two automobiles, a Toyota Carolla [sic] and a Plymouth Station Wagon. Both cars are registered with the New Hampshire Department of Motor Vehicles as non-commercial vehicles.

10. RSA 263:1 requires that non-commercial license plates bear the state motto, "Live Free or Die." The plaintiffs have a deeply felt conviction against this sentiment based on religious and political grounds.

11. Beginning in March or April, 1974, the plaintiffs began placing tape over the motto, "Live Free or Die" on their license plates. They did not obscure the numerals on the plates or the words "New Hampshire." In May or June, because neighborhood children kept removing the tape, Mr. Maynard punched out the words "or die" with a nail. He continued to keep the motto taped over, however, and the hole was not visible unless the tape was removed.

12. On November 27, 1974, plaintiff George Maynard was issued a summons by an officer of the Lebanon Police Department for misuse of plates under RSA 262:27-C. The officer confiscated one of the license plates. Plaintiff was tried and convicted of misuse of plates in Lebanon District Court on December 6, 1974. Defendant Neal Wooley, Chief of the Lebanon New Hampshire Police Department, prosecuted him. He was fined $25, which fine was suspended.

13. On December 31, 1974 while in Lebanon, Mr. Maynard saw a police officer removing the remaining plate from his car. He was given a summons charging him with misuse of plates because the words "Live Free or Die" were taped over.

14. Plaintiff fashioned a license plate out of cardboard and affixed it to the car so he could get home. In Plainfield, New Hampshire he was stopped by a state trooper who gave him yet another summons for misuse of plates for failing to display his duly issued number plates.

15. On January 10, 1975, plaintiff drove his Plymouth station wagon to the Lebanon District Court to answer the charge described in paragraph 13. The case was continued until January 31. While he was in the courtroom, an officer of the Lebanon Police Department removed both license plates from the Plymouth and confiscated them.

16. On January 31, 1975, Mr. Maynard was tried and convicted for misuse of plates in Lebanon District Court on the summons described in paragraph 13. He was sentenced to pay a fine and was given a six month suspended sentence. When plaintiff explained to the court that he would not pay the fine as a matter of his Christian conscience, the court sentenced him to serve fifteen days in the Grafton County House of Corrections. Plaintiff has served his sentence and is now free.

V. [sic]
STATEMENT OF CLAIM

17. RSA 263:1, insofar as it requires noncommercial number plates to bear the state motto "Live Free or Die", on its face and as applied to the plaintiffs in this case, abridges the right to be free from a required affirmation or belief under the First and Fourteenth' [sic] Amendments.

18. RSA 263:1, insofar as it requires noncommercial number plates to bear the state motto, as applied to the plaintiffs in this case, abridges the right to free exercise of religion under the First and Fourteenth Amendments.

19. RSA 263:1, insofar as it requires non-commercial plates to bear the state motto, violates the equal protection clause of the fourteenth amendment.

20. Insofar as RSA 262:27-C makes it a crime to cover or obliterate the state motto on non-commercial license plates, it violates the right to symbolic speech under the First and Fourteenth Amendments on its face and as applied.

21. RSA 262:27-C violates the due process clause of the fourteenth amendment insofar as it makes it a crime to cover the state motto on license plates because there is no reasonable relation between a system of motor vehicle registration and a legislative purpose to encourage State pride and individualism.

VI.
REQUEST FOR PRELIMINARY AND PERMANENT INJUNCTIVE RELIEF

22. Plaintiff Goerge [sic] Maynard is an unemployed printer. He needs the use of his automobiles to look for employment. He has been arrested twice by the Lebanon Police Department and convicted for misuse of plates because he has covered over the words "Live Free or Die" on his number plates.

23. Each time Mr. Maynard is given a summons, his license plates are confiscated by the police. When he attempted to drive home using a cardboard plate, he was arrested again by a state trooper. His objections to displaying the words "Live Free or Die" on his private property are religiously and politically based. The strength of these convictions is attested to by the fact that he spent fifteen days in jail rather than pay a $75 fine. Unless injunctive relief is granted, Mr. Maynard will continue to be arrested and jailed for defacing his license plates. Defendant Wooley has publicly stated that he was instructing his men to arrest Mr. Maynard again if he persists. His only alternative is to leave the State of New Hampshire.

24. Plaintiffs have taken reasonable non-legal steps to solve the problem. They have applied for commercial plates which do not bear the motto. They have been advised by Defendant Frederick Clark, Jr. that commercial plates would be issued for his station wagon if it was used in a business, but not otherwise, and that in order to get commercial plates for the Toyota he would have to trade it in for a truck. Mr. Maynard has paid his registration fees and has been issued two sets of 1975 license plates, all bearing the legend "Live Free or Die."

25. Mrs. Maynard works for Sarah Coventry Jewelry Company. She demonstrates jewelry through a house party plan. Without the use of a car, she cannot call on peoples' homes.

26. The plaintiffs request the court to issue a preliminary injunction to restrain defendants Wooley and Doyon, their agents and servants from arresting or prosecuting them if they cover over the words "Live Free or Die" on their new number plates. In the alternative, they seek an injunction against these defendants, their agents and servants from confiscating the

plaintiffs' number plates in the event they are issued more summonses for violating RSA 603:1.

27. Plaintiffs also seek permanent injunctive relief against defendant Clark to require him to issue them number plates without the state motto in the event that they succeed on the merits. Plaintiffs further request that the preliminary relief requested in para. 26 be made permanent.

WHEREFORE, petitioners pray,

1. That the court take jurisdiction of this case and request the [sic] the Chief Judge of the Circuit to convene a three judge court;

2. That the three judge court declare RSA 263:1 unconstitutional on its face and as applied to the plaintiffs insofar as it requires all non-commercial plates to bear the words "Live Free or Die" because it violates the First and Fourteenth Amendments to the United States Constitution;

3. That the court hold RSA 262:27-C invalid under the First and Fourteenth Amendments insofar as it makes it a crime to obscure the words "Live Free or Die" on number plates;

4. That the court issue preliminary and permanent injunctive relief restraining defendants Wooley and Doyon from enforcing the provisions of RSA 263:1 by issuing summonses and bringing criminal prosecutions against the plaintiffs under RSA 262:27-C.

5. That the court grant such other relief as it deems meet and just.

Dated: March 7, 1975

/s/ Richard S. Kohn
Richard S. Kohn
Vt.-N.H. Staff Counsel
New Hampshire Civil
Liberties Union, Inc.
3 Pleasant Street
Concord, New Hampshire

/s/ George Maynard
George Maynard

(Jurat and Certificate of Service omitted in printing)

MOTION TO DISMISS

Filed March 7, 1975

NOW COME the Defendants, Paul A. Doyon and Frederick Clark, Jr., individually and in their capacities as officials of the State of New Hampshire, and move the Court by saying:

1. Plaintiffs seek, among other remedies, an injunction restraining the Defendants from enforcing certain New Hampshire statutes, to wit, New Hampshire RSA 263:1 (supp) and RSA 262:27-c (supp) upon the ground that such statutes violate the United States Constitution.

2. Plaintiffs have failed to request the convening a three-judge district court to decide such issues, as required by 28 U.S.C. §2281.

3. Plaintiff George Maynard has been tried and convicted of two violations of these statutes in the courts of New Hampshire where he concededly raised constitutional issues. *Complaint*, para. IV, 11, 14.

WHEREFORE, the Defendants respectfully pray that this Complaint be dismissed

A. For lack of jurisdiction, under Rule 12 (b) (1) of F. R. Civ. P.; and

B. For failure to state a claim upon which relief can be granted, under Rule 12 (b) (6) of F. R. Civ. P.; and

C. On grounds of collateral estoppel. *Bricker* vs. *Crane*, 468 F.2d 1228 (1st Cir. 1972).

Respectfully submitted,

Colonel Paul A. Doyon and
Frederick Clark, Jr.

By /s/ David W. Hess
David W. Hess
Assistant Attorney General

(Certificate of Service omitted in printing)

OBJECTION TO MOTION FOR TEMPORARY RESTRAINING ORDER

Filed March 7, 1975

NOW COME the defendants, FREDERICK CLARKE, JR. and PAUL A. DOYON, individually and in their capacities as officials of the State of New Hampshire, and object to the plaintiffs' Motion for Temporary Restraining Order by saying:

1. Plaintiffs have failed to show that issuance of a temporary restraining order is necessary to prevent irreparable damage during the pendency of this action where the affidavit of GEORGE MAYNARD discloses that the plaintiffs waited 32 days from the date plaintiff GEORGE MAYNARD was tried, convicted and sentenced before filing this action, and where plaintiffs make no allegations that their status will be materially altered or in any way affected if such an order does not issue.

2. Plaintiffs have failed to make any showing of probable ultimate success in this action, and in fact are likely to fail on the merits. *See State vs. Hoskin,* 112 N.H. 332 (1972).

3. Plaintiffs have alleged no urgent circumstances warranting the issuance of a temporary restraining order and have failed to show that they have acted with the requisite speed and prudence to protect their interests.

4. Issuance of a temporary restraining order in this proceeding would adversely affect the public interest in maintaining uniform motor vehicle license plate systems and uniformly enforcing duly enacted penal legislation, and would detract from the legislative determination that display of the State motto promotes the general welfare by encouraging State pride and individualism. *See State vs. Hoskin, supra.*

Dated: Concord, New Hampshire
March 7, 1975

Respectfully submitted,

COL. PAUL A. DOYON, defendant
FREDERICK CLARK, JR., defendant

By: David W. Hess
David W. Hess
Assistant Attorney General

(Certificate of Service omitted in printing)

TEMPORARY RESTRAINING ORDER

Filed March 11, 1975

Both plaintiffs have alleged and testified that they have religious objections to the State motto, "Live Free or Die," being affixed to their privately owned automobiles.

On the basis of the affidavit, the pleadings and the testimony of the plaintiffs, it is clear that they have and will continue to suffer irreparable harm unless a temporary restraining order is issued. The Maynards own two automobiles: a station wagon, which Mr. Maynard uses; and a Toyoto, which Mrs. Maynard uses. The plaintiff George Maynard has spent fifteen days in the Grafton County House of Correction because he refused to pay a fine imposed after his conviction under NH RSA 262:27-C for placing tape over the words "Live Free or Die" on his license plates. Mr. Maynard has been given summonses on two occasions for misuse of plates, and his 1974 license plates were all confiscated by the police. He has been unable, of course, to use his automobile which made it impossible for him to meet his former employer's work schedule and makes it impossible for him now to look for work. Mrs. Maynard was a full-time employee of a jewelry manufacturer and has been unable to sell jewelry from door to door since she lost the use of her car. The evidence shows that they will not drive their cars with the State motto affixed to the number plates. If they operate their cars with the words "Live Free or Die" taped over or obliterated in any way, they will, of course, be subject to further criminal penalties. Mr. Maynard will be restricted in his ability to find work and Mrs. Maynard will continue to be unable to sell jewelry which is part of the needed income for the family.

On the other hand, it does not appear that the state will be irreparably injured by the issuance of a temporary restraining order pending the convening of a Three-Judge Court.

I also rule that there is a probability of success on the merits.

The defendants' motion to dismiss is denied.

WHEREFORE IT IS ORDERED THAT:

During the pendency of this restraining order, the plaintiffs may place tape over the words "Live Free or Die" on their 1975 license plates, but said tape must not in any way interfere with the words "New Hampshire" or the numerals on the plates.

Defendant Wooley as Chief of Police of the Lebanon Police Department, his agents, servants, employees and all others acting in concert with them are enjoined from issuing summonses or initiating prosecutions of the plaintiffs and from removing and impounding the plaintiffs' license plates from their cars during the pendency of this restraining order, or until further order of the court.

Defendant Paul A. Doyon, Director of the New Hampshire State Police, his agents, servants, employees and others acting in concert with them are similarly enjoined from issuing summonses or initiating prosecutions against the plaintiffs and from removing and impounding the plaintiffs' license plates during the pendency of this restraining order, or until further order of the court.

SO ORDERED.

March 11, 1975

/s/ Hugh H. Bownes
Hugh H. Bownes
United States District Judge

STIPULATION OF FACTS
Filed May 1, 1975

NOW COME the parties to the above entitled matter and stipulate as to the following facts:

1. Plaintiffs George and Maxine Maynard are husband and wife, citizens of the United States and residents of Claremont, County of Sullivan and the State of New Hampshire.

2. Defendant Neal R. Wooley is Chief of Police of Lebanon. New Hampshire.

3. Defendant Paul A. Doyon is Director of the New Hampshire State Police.

4. Defendant Frederick Clark, Jr., is Commissioner of the Department of Motor Vehicles, State of New Hampshire.

5. The plaintiffs own two automobiles, a 1971 Toyota and a 1968 Plymouth.

6. Both said automobiles are registered with the New Hampshire Department of Motor Vehicles as non-commercial vehicles.

7. Pursuant to RSA 263:1 (supp), non-commercial license plates bear the state motto, "Live Free or Die."

8. Beginning in March or April, 1974, the plaintiffs began placing non-transparent tape over the said motto on the license plates assigned by the Department of Motor Vehicles, State of New Hampshire, to the said two automobiles. The plaintiffs did not obscure the numerals on the license plates or the words, "New Hampshire." In May or June, 1974, because neighborhood children kept removing the tape, Mr. Maynard cut out of the license plates the words "or Die" and covered the resulting hole, as well as the words "Live Free" with tape.

9. By Lebanon District Court complaint dated November 27, 1974, Mr. Maynard was charged with a violation of RSA 262:27-c. This alleged offense related to the 1971 Toyota automobile. A law enforcement officer seized as evidence one of the license plates from said automobile. On December 6, 1974, Mr. Maynard was found guilty by the Lebanon District Court and was ordered to pay a fine of $25.00 which fine was suspended. A copy of said complaint is attached hereto as Appendix A.

10. By Lebanon District Court complaint dated December 28, 1974, Mr. Maynard was charged with a second violation of RSA 262:27-c. This alleged offense also related to the 1971 Toyota automobile. On January 31, 1975, Mr. Maynard was found guilty and was sentenced to pay a fine of $50.00 and was ordered sentenced to the Grafton County House of Correction for six months, which imprisonment was suspended. A copy of said complaint is attached hereto as Appendix B.

11. Mr. Maynard advised the court that he would refuse to pay the fines, now totalling $75.00, as a matter of conscience and not due to inability to pay. The court then ordered that Mr. Maynard be committed to the House of Correction for fifteen days. Mr. Maynard served his sentence and was released on or about the fifteenth of February, 1975.

12. By complaint dated January 3, 1975, Mr. Maynard was charged with a third violation of RSA 262:27-c. This alleged offense related to the 1968 Plymouth automobile. Mr. Maynard was found guilty on January 31, 1975, and the case was continued for sentence. A copy of this complaint is attached hereto as Appendix C.

13. In his defense of the said complaints, Mr. Maynard argued that his acts with respect to the license plates were the result of his personal religious convictions and, with respect to the fine imposed by the Lebanon District Court on January 31, 1975. refused to pay same as a matter of conscience.

14. The complainant in each of the above three complaints was Neal R. Wooley, Chief of Police of Lebanon, New Hampshire. Each case was prosecuted by Chief Wooley.

George Maynard &
Maxine Maynard

By, s/Richard S. Kohn

Neal R. Wooley, Paul A.
Doyon and
Frederick Clark, Jr.

By, /s/Robert V. Johnson, II
Assistant Attorney General

Neal R. Wooley, Individually

By /s/ R. Peter Decato

Appendix A.

THE STATE OF NEW HAMPSHIRE
GRAFTON, SS

LEBANON DISTRICT COURT
No. 2930

COMPLAINT

TO THE LEBANON DISTRICT COURT
The undersigned complains to said Court that the defendant
(Name) George C. Maynard of
(Address) RFD 2 Thrasher Road, Claremont, N.H. on or about
(Date of Offense) November 27, 74 at approximately (time) 9:05 P m. on/at
(Location) Route 12-A in ~~(Town)~~ City of Lebanon(west)
in said county and state, did commit the offense of
(Offense) Misuse of Plates
contrary to RSA 262:27-c and the laws of New Hampshire, for which the defendant should be held to answer, in that the defendant did knowingly attach to his motor vehicle, to wit a 1971 Toyota, a set of 1974 New Hampshire registration plates number SR-755, said number plates having been assigned by the Director of Motor Vehicles, and the said George C. Maynard to whom the said plates were assigned, did allow the plates to be obscured in that the figures LIVE FREE OR DIE were covered over with a strip of red tape, and the figures OR DIE had been cut away from the plates

against the peace and dignity of the State.
DATE: November 27, 1974

Neal R. Wooley
Complainant

OATH: Subscribed and sworn to by the complainant, before me,

Justice of the Peace

PLEA: Upon arraignment the defendant pleaded as follows:
( ) Guilty (X) Not Guilty ( ) Nolo Contendere ( ) Entered no plea

FINDING: After hearing the court found that the defendant was
(X) Guilty ( ) Not Guilty

SENTENCE: The following sentence (or other order) was imposed:
(X) Fine of $ 25.00 Suspended during good behavior
( ) Commitment to House of Correction at Haverhill at hard labor for period of ____ days ____ months.
( ) Commitment suspended upon payment of $____ fine.
( ) Sentence suspended during good behavior. Order of Commitment may issue upon petition to court.
( ) Case continued for sentence. ( ) Complaint placed on file.
( ) Defendant's license (or right) to operate a motor vehicle revoked for period of____
( ) Recommended suspension of license (or right) to operate motor vehicle for period of ____
( ) Defendant placed on probation for period of ____ months.
( ) Defendant failed to appear. $____ bail forfeited.
( )

1/31/75 - Respondent upon continuity thru duty for cause of... Fine of $25.00 is ordered forward + has paid [illegible]

DATE: 12-6-74

Justice

DOB 3-5-32 LIC. NO. 03 MD0 32051 NH REG. SR-755 NH

AC 010

A True Copy
Attest: Gabriel Gudas, Clerk

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APPENDIX A-1

THE STATE OF NEW HAMPSHIRE
[redacted] GRAFTON, SS.

LEBANON
[redacted] DISTRICT COURT
No. 2730

COMPLAINT

TO THE LEBANON DISTRICT COURT
The undersigned complains to said Court that the defendant
(Name) George E. Maynard of
(Address) R.F.D. #2, Thrasher Road, Claremont, New Hampshire on or about
(Date of Offense) November 27, 1974 at approximately (time) 9:05 P.m., on/at
(Location) Route 12-A in (Town) City of Lebanon (west)
in said county and state, did commit the offense of
(Offense) Misuse of Plates
contrary to RSA 262:27-c and the laws of New Hampshire, for which the defendant should be held to answer, in that the defendant did knowingly attach to his motor vehicle, to wit, a 1971 Toyota, a set of 1974 New Hampshire registration plates number SR-755, said number plates having been assigned by the Director of Motor Vehicles, and the said George C. Maynard to whom the said plates were assigned, did allow the plates to be obscured in that the figures LIVE FREE OR DIE were covered over with a strip of red tape, and the figures OR DIE had been cut away from the plates,

against the peace and dignity of the State.
DATE: November 27, 1974 /s/ Neal R. Wooley
Complainant

OATH: Subscribed and sworn to by the complainant, before me, /s/ Patrick J. Walsh
Justice of the Peace

PLEA: Upon arraignment the defendant pleaded as follows.
( ) Guilty (X) Not Guilty ( ) Nolo Contendere ( ) Entered no plea

FINDING: After hearing the court found that the defendant was
(X) Guilty ( ) Not Guilty

SENTENCE: The following sentence (or other order) was imposed.
(X) Fine of $25.00 suspended during good behavior
( ) Commitment to House of Correction at Boscawen at hard labor for period of days months.
( ) Commitment suspended upon payment of $ fine.
( ) Sentence suspended during good behavior Order of Commitment may issue upon petition to court.
( ) Case continued for sentence. ( ) Complaint placed on file.
( ) Defendant's license (or right) to operate a motor vehicle revoked for period of
( ) Recommended suspension of license (or right) to operate motor vehicle for period of
( ) Defendant placed on probation for period of months.
( ) Defendant failed to appear. $ bail forfeited.
( ) 1/31/75 respondent upon conviction this date for same offense fine of $25.00 is ordered forward to be paid.
/s/ W. E. Lovejoy

DATE: 12-6-74 /s/ William E. Lovejoy
Justice

DOB 3-5-32 UC. NO. 03 MDG 32051 NH REG. SR-755 NH

A True Copy.
Attest: Patrick J. Walsh, Clerk

Appendix B.

THE STATE OF NEW HAMPSHIRE
GRAFTON, SS

LEBANON DISTRICT COURT
No. 157

COMPLAINT

TO THE LEBANON DISTRICT COURT
The undersigned complains to said Court that the defendant
(Name) George C. Maynard
(Address) Thrasher Road, Claremont, New Hampshire of
(Date of Offense) December 28, 1974 on or about at approximately (time) 3:36 P m., on/at
(Location) North Park Street in (Town) City of Lebanon
in said county and state, did commit the offense of
(Offense) Misuse of Plates
contrary to RSA 262:27-c and the laws of New Hampshire, for which the defendant should be held to answer, in that the defendant did knowingly attach to his motor vehicle, to wit a 1971 Toyota, a set of 1974 New Hampshire registration plates number SR 755, said number plates having been assigned by the Director of Motor Vehicles, and the said George C. Maynard to whom the said plates were assigned, did allow the plates to be obscured in that the figures LIVE FREE OR DIE were covered over with a strip of red tape, and the figures OR DIE had been cut away from the plate

1/31/75. Respondent known refused to comply with the order of this Court in the payment of the Total fine of $75.00 and having indicated to the Court that his refusal is willful & contumacious and not to inconvenience or disadvantage Respondent in this respect Committed to the Grafton County House of Correction for thirty days pursuant to RSA 618:9 for 1 days or Stand committed. Paul R. Lindsay

against the peace and dignity of the State.
DATE: December 28, 1974 Justice

OATH: Subscribed and sworn to by the complainant, before me, /s/ Patrick J. Walsh
Justice of the Peace

PLEA: Upon arraignment the defendant pleaded as follows.
( ) Guilty (X) Not Guilty ( ) Nolo Contendere ( ) Entered no plea

FINDING: After hearing the court found that the defendant was
(X) Guilty ( ) Not Guilty

SENTENCE: The following sentence (or other order) was imposed.
(X) Fine of $ 56.00
( ) Commitment to House of Correction at Haverhill at hard labor for period of days months.
( ) Commitment suspended upon payment of $ fine.
( ) Sentence suspended during good behavior. Order of Commitment may issue upon petition to court.
( ) Case continued for sentence. ( ) Complaint placed on file.
( ) Defendant's license (or right) to operate a motor vehicle revoked for period of
( ) Recommended suspension of license (or right) to operate motor vehicle for period of
( ) Defendant placed on probation for period of months.
( ) Defendant failed to appear. $ bail forfeited.
(X) Suspension of bail ordered forthwith upon conviction for time of failure to appear in this Court 12/6/74 is vacated and the respondent is to pay $ 56.00 forthwith

DATE: 1/31/75 refused to pay / Justice
DOB 3-5-32 UC. NO. 03 MDG 32051 REG. SR-755

AC 010

A True Copy.
Attest: Patrick J. Walsh, Clerk

TYPED REPRODUCTION OF ORIGINAL

APPENDIX B-1

THE STATE OF NEW HAMPSHIRE
GRAFTON, SS.

LEBANON DISTRICT COURT
No. 151

COMPLAINT

TO THE CONCORD DISTRICT COURT
The undersigned complains to said Court that the defendant
(Name) George C. Maynard of
(Address) Thrasher Road, Claremont, New Hampshire on or about
(Date of Offense) December 28, 1974 approximately (time) 3:36 p.m., on/at
(Location) North Park Street in City of Lebanon
in said county and state, did commit the offense of
(Offense) Misuse of Plates
contrary to RSA 262:27-c and the laws of New Hampshire, for which the defendant should be held to answer, in that the defendant did knowingly attach to his motor vehicle, to wit, a 1971 Toyota, a set of 1974 New Hampshire registration plates number SR 755, said number plates having been assigned by the Director of Motor Vehicles, and the said George C. Maynard to whom the said plates were assigned, did allow the plates to be obscured in that the figures LIVE FREE OR DIE were covered over with a strip of red tape, and the figures OR DIE had been cut away from the plate,

1/31/75 - Respondent having refused to comply with the order of this court in the payment of a total fine of $75.00 and having advised the court that his refusal is one of conscience and not of inability to pay because of indigency, Respondent is therefore ordered committed to the Grafton County House of correction pursuant to RSA 618:9 for 15 days. Stand committed.

/s/ William E. Lovejoy, Justice

against the peace and dignity of the State.
DATE: December 28, 1974
/s/ Neal R. Wooley
Complainant

OATH: Subscribed and sworn to by the complainant, before me,
/s/ Patrick J. Walsh
Justice of the Peace

PLEA: Upon arraignment the defendant pleaded as follows:
( ) Guilty (X) Not Guilty ( ) Nolo Contendere ( ) Entered no plea

FINDING: After hearing the court found that the defendant was
(X) Guilty ( ) Not Guilty

SENTENCE: The following sentence (or other order) was imposed:
(X) Fine of $. 50.00
( ) Commitment to House of Correction at Boscawen at hard labor for period of ..... days months.
( ) Commitment suspended upon payment of $. ..... fine.
( ) Sentence suspended during good behavior. Order of Commitment may issue upon petition to court.
( ) Case continued for sentence. ( ) Complaint placed on file.
( ) Defendant's license (or right) to operate a motor vehicle revoked for period of .....
( ) Recommended suspension of license (or right) to operate motor vehicle for period of .....
( ) Defendant placed on probation for period of ..... months.
( ) Defendant failed to appear. $..... bail forfeited.
(X) Suspension of fine ordered on conviction for same offense in this court 12/6/74 is vacated and the respondent is ordered to pay the same.

/s/ William E. Lovejoy

DATE: 1/31/75
/s/ William E. Lovejoy
Justice

DOB 3-5-32 LIC. NO. 03 MDG 32051 REG. SR 755

A True Copy.
Attest: Patrick J. Walsh, Clerk

Appendix C.

THE STATE OF NEW HAMPSHIRE
GRAFTON, SS

LEBANON DISTRICT COURT
No. 152

COMPLAINT

TO THE LEBANON DISTRICT COURT
The undersigned complains to said Court that the defendant
(Name) George C. Maynard of
(Address) Thrasher Road, Claremont, New Hampshire on or about
(Date of Offense) January 3, 1975 at approximately (time) 4:20 P.m., on/at
(Location) East Park Street in City of Lebanon
in said county and state, did commit the offense of
(Offense) Misuse of Plates
contrary to RSA 262:27-c and the laws of New Hampshire, for which the defendant should be held to answer, in that the defendant did knowingly attach to his motor vehicle, to wit a 1968 Plymouth station wagon, a set of 1974 New Hampshire registration plates number SP 740, said number plates having been assigned by the Director of Motor Vehicles, and the said George C. Maynard to whom the said plates were assigned, did allow the plates to be obscured in that the figures OR DIE in the State Motto had been cut away and the hole covered with white tape

against the peace and dignity of the State.
DATE: January 3, 1975
/s/ Neal R. Wooley
Complainant

OATH: Subscribed and sworn to by the complainant, before me,
/s/ Patrick J. Walsh
Justice of the Peace

PLEA: Upon arraignment the defendant pleaded as follows:
( ) Guilty (X) Not Guilty ( ) Nolo Contendere ( ) Entered no plea

FINDING: After hearing the court found that the defendant was
(X) Guilty ( ) Not Guilty

SENTENCE: The following sentence (or other order) was imposed:
( ) Fine of $.....
( ) Commitment to House of Correction at Haverhill at hard labor for period of ..... days months.
( ) Commitment suspended upon payment of $..... fine.
( ) Sentence suspended during good behavior. Order of Commitment may issue upon petition to court.
(X) Case continued for sentence. ( ) Complaint placed on file.
( ) Defendant's license (or right) to operate a motor vehicle revoked for period of .....
( ) Recommended suspension of license (or right) to operate motor vehicle for period of .....
( ) Defendant placed on probation for period of ..... months.
( ) Defendant failed to appear. $..... bail forfeited.
( ) .....

DATE: 1/31/75
/s/ William E. Lovejoy
Justice

DOB 3-5-32 LIC. NO. 03 MDG 32051 REG. SP 740

AC 010

A True Copy.
Attest: Patrick J. Walsh, Clerk

BEST COPY AVAILABLE

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APPENDIX C-1

LEBANON DISTRICT COURT
No. 152

THE STATE OF NEW HAMPSHIRE
GRAFTON, SS.

LEBANON DISTRICT COURT

COMPLAINT

TO THE DISTRICT COURT
The undersigned complains to said Court that the defendant
(Name) George C. Maynard of
(Address) Thrasher Road, Claremont, New Hampshire on or about
(Date of Offense) January 3, 1975 at approximately (time) 4:20 p. m., on/at
(Location) East Park Street in City of Lebanon
in said county and state, did commit the offense of
(Offense) Misuse of Plates
contrary to RSA 262:27-c and the laws of New Hampshire, for which the defendant should be held to answer, in that the defendant did knowingly attach to his motor vehicle, to wit, a 1968 Plymouth station wagon, a set of 1974 New Hampshire registration plates number SF 740, said number plates having been assigned by the Director of Motor Vehicles, and the said George C. Maynard to whom the said plates were assigned, did allow the plates to be obscured in that the figures OR DIE in the State Motto had been cut away and the hole covered with white tape,

against the peace and dignity of the State.
DATE: January 3, 1975 /s/ Neal R. Wooley
Complainant

OATH: Subscribed and sworn to by the complainant, before me. /s/ Patrick J. Walsh
Justice of the Peace

PLEA: Upon arraignment the defendant pleaded as follows:
( ) Guilty (X) Not Guilty ( ) Nolo Contendere ( ) Entered no plea

FINDING: After hearing the court found that the defendant was
(X) Guilty ( ) Not Guilty

SENTENCE: The following sentence (or other order) was imposed.
( ) Fine of $.
( ) Commitment to House of Correction at Boscawen at hard labor for period of days months.
( ) Commitment suspended upon payment of $ fine.
( ) Sentence suspended during good behavior. Order of Commitment may issue upon petition to court.
(X) Case continued for sentence. ( ) Complaint placed on file.
( ) Defendant's license (or right) to operate a motor vehicle revoked for period of
( ) Recommended suspension of license (or right) to operate motor vehicle for period of
( ) Defendant placed on probation for period of months.
( ) Defendant failed to appear. $ bail forfeited.
( )

DATE: 1/31/75 /s/ William E. Lovejoy
Justice

DOB 3-5-32 LIC. NO. 03 MDG 32051 REG. SF 740

A True Copy.
Attest: Patrick J. Walsh, Clerk

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW HAMPSHIRE

EXCERPTS FROM TRANSCRIPT OF HEARING ON SEPTEMBER 22, 1975

[6] MR. JOHNSON: Your Honor, if, in fact, the present state of the affairs of this case is that the petitioners own one vehicle, that that is not a station wagon, then the State is in a position to stipulate that if that vehicle is not used for commercial purposes, then the only plate available to the petitioners is a plate bearing the State Motto "Live Free or Die."

JUDGE BOWNES: Doesn't that take care of it, Mr. DePuy?

MR. DE PUY: I think it does, except as to our denial of the equal protection argument as to the fact other plates are issued by the State for dealer plates and farm plates, agricultural plate.

JUDGE BOWNES: That is a fact. We can't do anything about that. That is a fact, isn't it?

MR. DE PUY: Yes, Your Honor.

JUDGE BOWNES: Mr. Johnson, can it almost be stipulated that, except for the regular, what shall I call it, residential plates, no other plates in the state that are issued, commercial plates of any kind and initial plates, and whatever else there are, bear the motto, isn't that true?

MR. JOHNSON: Your Honor, I would not only go so far as to so stipulate, but we have here this morning a sample plate of
[7] each type made available in the State of New Hampshire. And, if counsel for the practitioners would agree, we would offer those into evidence and so stipulate.

JUDGE BOWNES: All right.

MR. DE PUY: No objection. We agree, Your Honor.

JUDGE COFFIN: Gentlemen, we don't really need these physical plates themselves. We understand it's been stipulated that the non-commercial plate is the only one carrying the motto. And whatever all the others carry, do we need to know that?

MR. JOHNSON: Your Honor, the State's position would be that I think that it would be of value to the Court, because I believe there will be testimony that if the motto is taped over on a non-commercial plate, it does raise problems with regard to the identification of motor vehicles by law enforcement personnel.

JUDGE COFFIN: Will there be testimony on this issue?
MR. JOHNSON: There will, Your Honor.
JUDGE COFFIN: But I thought we had taken care of everything except the sincerity issue in terms of this stipulation that you gentlemen just arrived at.
MR. JOHNSON: I believe there also may be an issue, Your Honor, with regard to whether or not the prosecution of the petitioners herein has been undertaken in bad faith or harrassment.
MR. DE PUY: Your Honor, I think the statutes provide for the issuance of these plates, and I suppose there is no necessity
[8] to have the actual plates marked in evidence.
JUDGE BOWNES: Well, if there is a question as to whether or not taping over the normal plate is going to interfere with the identification, we could accept that normal plate in evidence, and you can perform whatever—you can explain that.
JUDGE COFFIN: At the time that takes place, you can demonstrate or do whatever else you want to do.
We then will proceed to hear your witnesses.
As you gentlemen know, we have other cases on today, and we would very much like to complete this case this morning. Is this feasible?
MR. DE PUY: I think it is, Your Honor.
MR. JOHNSON: It is, Your Honor.
MR. DE PUY: We have one other witness, and perhaps we can eliminate him by stipulation with counsel for the State, and that is Chief Wooley, the Lebanon Police Chief. And the testimony we seek to elicit there is that both the Maynards are under a threat of prosecution for violation of misuse of plates by taping over the motto. And if the State will stipulate to that fact, I think we can eliminate Chief Wooley as a witness.
MR. JOHNSON: The State will not stipulate there is any threat of prosecution to Mrs. Maynard, nor to Mr. Maynard, so long as he complies with the laws of this State.
JUDGE GIGNOUX: Will the State stipulate if they do not comply with the State there is a threat of prosecution?
[9] MR. JOHNSON: Yes, Your Honor.
JUDGE GIGNOUX: And, specifically, they do not comply with the statute here in question, which makes it unlawful, as I understand it, to obliterate "Live Free or Die" on those plates.
MR. JOHNSON: Yes, Your Honor.
JUDGE GIGNOUX: There is a threat of prosecution of both.

MR. JOHNSON: Yes, Your Honor.
JUDGE COFFIN: All right, you may proceed.
MR. DE PUY: One further point we would like to bring to the Court's attention, that under New Hampshire law, RSA 260:10-a, a person can get so-called initial license plates or vanity plates designed by the Director to the person's taste or request.
JUDGE BOWNES: Upon the payment of a fee of $5.00.
MR. DE PUY: That's right, Your Honor.
Mr. Maynard, will you take the stand.

GEORGE C. MAYNARD

called as a witness in his own behalf, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

(Questions by Mr. DePuy)

Q. Please state your name and address for the Court, Mr. Maynard.
A. George C. Maynard; residence, Claremont, New
[10] Hampshire, Thrasher Road.
Q. What is your occupation?
A. Printer.
Q. Mr. Maynard, will you explain to the Court your objection to the State Motto "Live Free Or Die" that appears on your license plate?
A. Yes, sir, I'll be glad to. The State Motto "Live Free Or Die" is against my Christian conscience and Christian belief. According to the Bible, the understanding that I have, the Bible, in John, 17:3, which mentions here that this means — this is quoted from John, 17:3, this means everlasting life. They are taking the knowledge of you, the only true God and the one whom you sent forth, Jesus Christ.
Here the Bible speaks to me of promise of everlasting life if I have knowledge of God's purpose, and this knowledge is contained in the Bible, which, in John 3:16, which corresponds with this, which states, "For God loved the world so much that he gave his only-begotten Son in order that everyone who exercises faith in Him may not perish, but may have everlasting life."
And so I have been purchased by a ransomer, Jesus Christ, by giving up his life, and I accept this, and I have a hope of gaining everlasting life under God's rule.
So, therefore, the "Live Free Or Die" Motto, it is in conflict with this teaching or this belief that I have in the Bible, and I

[11] teach and live by this, that I would give my life to God. I am not really giving it up if he gives it back to me in resurrection or never have a hope of never tasting that. God's government, I hope and pledge my allegiance to, will manifest itself in the near future.

Q. And it is because of this religious belief you owe that you cannot go along with having this motto on your license plate?

A. Yes, sir. The reason I taped it over, it helped me to live up to my dedication. I am a baptized Witness of Jehovah.

In Romans 10, it says "For with the heart, one exercises faith for righteousness; but, with the mouth, makes public declaration for salvation."

By taping it over, I have made a public declaration of my faith for my salvation.

Q. You also object to this motto on political grounds?

A. Yes, I do.

Q. What are those grounds?

A. Well, ironically, just recently, the Legislators of the State of New Hampshire encourage people to pray in public schools, the Lord's Prayer, the Our Father, and that is recorded in the 6th Chapter of Matthew, and in the 9th and 10th verse. He says "Our Father in heaven, let your name be sanctified. Let your kingdom come. Let your will take place on the earth as it is in heaven."

[12] So here the Lord's Prayer teaches us, all mankind, to pray for God's government to come on earth. And people may ask the question, if God's government is going to come on the earth and rule, what is going to happen to the present government that we have now? Well, here again, we have to turn to God's word, the Bible, which is the Book of Truth, and it is undisputable, it is a written guarantee that what he says is true. As a matter of fact, maybe the Courts use the Bible to take an oath.

And so Daniel brings this point, what is going to happen to the present government? And that is in Daniel, 244, Chapter 2, Verse 44, and I quote:

" And in the days of those kings, the God of heaven will set up a kingdom that will never be brought to ruin, and the kingdom itself will not be passed on to any other people. It will crush and put an end to all these kingdoms, and it itself will stand to time indefinite."

So God promised us of a better government and of a better choice. And this is one of the reasons why I dedicated my life to

God as a Jehovah's Witness is because he promised of a better choice of a government. And so, being an American citizen, I have a free conscience that I enjoy of being able to make a choice and to express this publicly to let people know of my faith.

But, here again, this government promises us life. Here [13] again, in Revelation, 21st Chapter, and the 3rd verse, or 4th verse, Revelation 21:

"And under God's government he promises this: He will wipe out every tear from their eyes, and death will be no more. Neither will be mourning nor outcry, nor pain be any more, for the former things have passed away."

So God promised us in the Bible that he is going to do away with that. And so, therefore, if I would give up my life for a political system or other, then I would be giving up the hope of everlasting life.

JUDGE COFFIN: So far, all that you have said in my mind falls within your first reason, which is a religious reason. Your counsel was asking, if I understood you, whether you had, in addition to the religious reason, any political grounds?

THE WITNESS: Well, a kingdom has subjects, which is a rule. And the prayer that I quoted from, the scriptures say that we pray for God's government, a kingdom, and this kingdom in Daniel 244 says the kingdom will do away with the present system, present governments of the world today. Revelations: Under this kingdom, there will be everlasting life, no death or sickness, no police government. As a matter of fact, Paul, 37:10, look for a bad verse and you won't be able to find one. These are my beliefs and my convictions.

JUDGE GIGNOUX: These are religious convictions?

THE WITNESS: Yes, sir. But they are political, also, be- [14] cause a government, a kingdom is a government, and the Bible speaks of God's government and God's rule.

JUDGE BOWNES: Can we agree they are not political in the conventional sense?

THE WITNESS: I don't understand in the conventional sense. In the system we are living under the rule that we are now—

JUDGE BOWNES: Political to us means a system relative to the government that we have today on a day to day basis rather than looking to the future.

THE WITNESS: Well, the government that I support, you see, the government that I support is God's government, God's

kingdom. That is my choice. So, therefore, I never voted in my life under this political system. I never cast a vote, because my choice is a theocratic government, God's rule, not man's rule. The political system we have today is man's rule. And so my choice is God's rule.

JUDGE BOWNES: All right.

(Questions by Mr. DePuy)

Q. Mr. Maynard, why did you place tape over the motto on your license plates?

A. As I mentioned before, in Romans 10:10, it helped me make a public declaration of my faith that I do not live by the words "Live Free Or Die," that I don't subscribe to this. I will not give my life up for freedom. I would rather live under
[15] bondage and still be alive to be able to enjoy my conscience and enjoy life that has everything to offer. If I give up my life, would the State give it back to me? The banks don't give out money unless they know they have return. And so, therefore, it would be bad business. They will give out something that, you know, they are not going to get back. If I give my life to the State or encourage other people to do it, would the State give it back to me? No. But God will. So, therefore, I will not support that slogan.

Q. At this time, you only have your one car, the Toyota?

A. Yes, sir.

Q. I would like to show you this license plate. Would you identify it for the Court?

A. Yes, sir. This is my license plate.

Q. And from what car was that taken?

A. This is taken from the Plymouth, which we sold. Now, if we are financially in a position, we might buy another car.

Q. And this plate has a piece of fluorescent red or orange tape across the letters "Live Free Or Die" at the top?

A. Yes, sir.

Q. None of the other markings are covered?

A. No, sir, none, the identifciation [sic] of the vehicle has no interference from identifying the car being properly registered.

Q. Is this license plate taped over in the same manner as the
[16] license plates which now appear on your Toyota?

A. Yes, sir.

MR. DE PUY: Because Mr. Maynard would like to keep his plates on his car, I would like to introduce this as an exhibit, Your Honors.

MR. JOHNSON: The State has no objection to this being introduced as an exhibit. The State has objection to the witness putting his license plates back on the car.

JUDGE COFFIN: He objects to the witness placing the tape—

JUDGE BOWNES: What is that, Exhibit No. 1?

THE CLERK: Yes.

JUDGE COFFIN: It may be admitted without objection.

THE WITNESS: I would like to also mention the fact—

JUDGE BOWNES: No, don't mention anything unless a question is asked of you, Mr. Maynard.

THE WITNESS: All right, Your Honor.

(Questions by Mr. DePuy)

Q. On the license plates that appear on your car now, is there any part of the plate that has been cut out?

A. No, sir.

Q. Just taped over?

A. Yes, sir.

Q. Can you tell the Court why you used this bright orange or red fluorescent type tape or reflective tape?

[17] A. The reason for it is that people will recognize what I am doing, which is very effective. A lot of people stop me. And one person says "You can't do that. That's against the law."

I says "Fortunately, I was given permission by the Federal Court in a temporary injunction against the State." And here I was able to converse with him and express my beliefs and my reason for doing so. And so, therefore, I was able to bear witness to the truth of God's kingdom.

Q. Has this taping caused any outbursts or brawls or anything of that nature?

A. No, they haven't. I can see in my rear-view mirror, people stop at a stop sign and are pointing at it and bringing everybody else's attention to it, and that tells you that people are taking notice of the tape. One person even shook my hand and—

Q. Do you drive your car now with that motto on your license plate not taped over?

A. No, sir.

* * *

[20] Q. Did you appear in court in Claremont on January 17th?

A. Yes, sir, I did.

Q. And can you tell us what transpired then and afterwards with regard to that summons?

A. The Judge, I believe, was—I can't remember his name. But, anyway, he asked me if I was guilty, and I pleaded inno-
[21] cent, so he told me the charges were misuse of plates. And I told him—so the case was continued for another date. I can't remember offhand which date that was. I think the Judge's name was Denault, something like that.

Q. And what happened after that?

A. Well, after that, I had to appear in court in Lebanon for that summons on December, was it 3d?

Q. Maybe I can help you. Was this case subsequently ever scheduled for trial again?

A. No, sir.

Q. It's been continued?

A. It's been continued, and I haven't heard anything from the Courts ever since.

Q. Your first conviction in the Lebanon District Court was December 6, 1974. At that time, were you represented by counsel?

A. No, sir, I represented myself.

JUDGE BOWNES: Can't you agree on the status of the District Court proceedings? What do you say it is, Mr. DePuy?

MR. DE PUY: Your Honor, we have a tape recording of the Court proceedings at that time in which Judge Lovejoy advised Mr. Maynard as to the status of the law with regard to misuse of plates, and we would like to introduce that tape recording in evidence, and, with the permission of the Court, play it for the Court at this time.

JUDGE BOWNES: Well, what happened?

[22] MR. DE PUY: What happened was Mr. Maynard gave testimony similar to the testimony he has given to the Court today with regard to the basis of his objection to the motto, and Judge Lovejoy then explained to Mr. Maynard that he had had a similar case in the Lebanon District Court that had been appealed to the Supreme Court, and the Supreme Court had ruled and the law was that, under 282:27-c, you could not tape over the State Motto on your license plate. And we would seek to introduce that evidence to show that Mr. Maynard, not being represented by counsel at the time, had no thought in his mind of appealing that conviction or any subsequent conviction in light of what he thought was good advice from Judge Lovejoy, what he thought was advice of a reliable nature.

JUDGE BOWNES: Did he plead guilty?

MR. DE PUY: No, Your Honor. I will have to let the witness speak for himself as to that. I understand he pleaded innocent.

JUDGE BOWNES: Don't you have a record of that, too? Don't you know what happened?

MR. DE PUY: Yes, Your Honor. He admits to the taping, and he admits to the violation of the statute, but his plea was innocent in that he had a religious and political reason for taking the actions that he did.

JUDGE BOWNES: Well, I thought that you and Mr. Johnson had agreed as to what the status was of the District Court records.

[23] Now, I would like to know, because we went into this at the hearing on the preliminary injunction, and I was either misinformed or misunderstood, but, at that time, there was a mistake. Can you or Mr. Johnson tell us now what the status is of the situation in regard to the District Court?

MR. DE PUY: I think there is no disagreement as to what transpired at the District Court level. The reason we seek to introduce this evidence is with regard to the problem presented with the Younger abstention problem.

JUDGE BOWNES: Well, that's what I am trying to get on. What can you agree on as to what happened in the District Court? How many appearances were there? How many times was he in the District Court?

MR. DE PUY: There were two appearances in the Lebanon District Court.

JUDGE BOWNES: And what happened as to each of them? What is the official decision on each of them?

MR. DE PUY: At the first appearance on December 6, 1974, Mr. Maynard was given a suspended sentence, $25.00 fine, sentence suspended.

JUDGE BOWNES: Now, do you agree to that, Mr. Johnson?

MR. JOHNSON: With the addition that the defendant pled not guilty and was found guilty.

JUDGE BOWNES: Is that correct, Mr. DePuy?

MR. DE PUY: That's correct.

[24] JUDGE BOWNES: That's the first one. What happened the second time?

MR. DE PUY: Subsequently, Mr. Maynard received a summons on December 8, 1974, and January 3, 1975. With

regard to those two summonses, he appeared in Lebanon District Court on January 31, 1975. As to the first summons, he pleaded innocent, he was found guilty, and given a $50.00 fine and a six-month suspended sentence.

JUDGE BOWNES: Mr. Johnson, do you agree as to that?

MR. JOHNSON: Yes, Your Honor.

JUDGE BOWNES: All right, what happened next?

MR. DE PUY: Mr. Maynard then informed the Court that, as a matter of Christian conscience, he could not pay either the prior fine of $25.00 or the subsequent fine of $50.00, whereupon the Court sentenced him to serve fifteen days in the Grafton County House of Correction. As to the remaining charge pending, the Court continued the case for sentencing. To that remaining charge, Mr. Maynard pled innocent and was found guilty.

JUDGE BOWNES: Do you agree to that, Mr. Johnson?

MR. JOHNSON: Yes, Your Honor.

JUDGE BOWNES: Well, now, in one—well, it is stated that, I think in the briefs, if not in the stipulation of fact, that there is a pending sentence. What is the situation in regard to that? Is there a sentence pending?

MR. DE PUY: That last case was marked continued for
[25] sentence, but there's been no sentence since that time.

JUDGE GIGNOUX: Did that come off the hearing at the same time as the second charge?

MR. DE PUY: Yes, it did.

JUDGE GIGNOUX: This is January 31st?

MR. DE PUY: Yes, it did, Your Honor.

JUDGE GIGNOUX: He was convicted of that charge, but it was continued for sentence, is that it?

MR. DE PUY: That's correct, Your Honor.

JUDGE BOWNES: Is that right, Mr. Johnson?

MR. JOHNSON: That's correct, Your Honor.

The State disputes, and will so argue in oral argument, that the sentence was continued means that the case is pending. But it is a correct statement of the facts.

JUDGE BOWNES: All right. And the case in Claremont has just been continued, not continued for sentence, but continued, is that correct?

MR. DE PUY: The case in Claremont, that's correct, Your Honor. But that is a separate case. Now that deals with the problem he had with these cardboard plates, and I don't

think it is relevant to the matter now at hand. But we wanted to bring that situation to the Court's attention.

JUDGE BOWNES: All right.

MR. DE PUY: At this time, I would—

JUDGE GIGNOUX: At any point in any of these State
[26] District Court proceedings, was there any discussion of his right to counsel? You have a record, I understand.

MR. DE PUY: We have a tape recording of the December 6th, the first one.

As to the second one, Mr. Maynard has been prepared to give testimony as to what advice he received at that second one.

JUDGE GIGNOUX: At the December 6th hearing, did the Judge advise him he had a right to counsel?

MR. DE PUY: The Judge advised him there was no need to appeal.

JUDGE GIGNOUX: Not to appeal, I said counsel.

MR. DE PUY: Counsel. No, I don't believe there was, but I would defer to Mr. Maynard on that point.

THE WITNESS: The Judge mentioned or asked me if I wanted a lawyer, and to that I said "No, sir, I would like to make my own defense." But, after the conviction, I asked him "Should I make an appeal?"

MR. JOHNSON: Your Honor, I am going to object. This is not responsive. And, in addition to right of counsel, I appreciate Judge Gignoux's inquiry, but the petitioners know whether the alleged petitioner was denied right to counsel. And I think it is assumed, or has been, it all points to he has been advised of his rights at the District Court.

JUDGE BOWNES: That wasn't assumed at the preliminary hearing. One of the things that impressed me at the pre-
[27] liminary hearing, and Mr. Kohn bore down on, was he never was represented by counsel at any time.

MR. JOHNSON: I think that there is a distinction, Your Honor, between being represented by counsel and being advised of the right to be represented by counsel. And nowhere in the petitioner's briefs has it been argued that this petitioner was not advised of his rights to counsel and did not meaningfully waive those rights.

JUDGE GIGNOUX: Mr. Johnson, my question is directed to the argument in the plaintiffs' brief that extraordinary circumstances present here justify an exception to the rule.

And one of these extraordinary circumstnaces [sic] I understood plaintiffs are emphasizing was that Mr. Maynard was not represented by a lawyer in the District Court proceedings. If I understood his testimony just now, the Judge asked him if he wanted a lawyer, and he said he did not want a lawyer. I suggest it is at least a fact to consider.

MR. JOHNSON: Thank you.

JUDGE BOWNES: There is another question pending.

(Questions by Mr. DePuy)

Q. There was a question as to whether the Judge had advised Mr. Maynard at the first hearing of his right to appeal.

A. I asked the Judge after the sentence if I should make an appeal, and he said it wasn't necessary, because there was nothing to appeal.

[28] MR. JOHNSON: Your Honor, the State objects unless there is an offer of proof. It is hearsay evidence.

THE WITNESS: No, sir, I have witnesses.

JUDGE COFFIN: At the moment, it would seem to me that is—

MR. DE PUY: Your Honor, I think the witness can testify as to his understanding of his right of appeal at that time.

JUDGE COFFIN: I didn't hear you.

MR. DE PUY: I believe the witness can testify as to his understanding of his right to appeal at the time.

JUDGE COFFIN: Yes. You think the fact that such a statement was made can be testified to?

MR. DE PUY: Yes, I do, Your Honor.

JUDGE BOWNES: Well, we do, too.

MR. DE PUY: At this time, we would like to introduce the tape of the first hearing, and, with the Court's permission, play it for the Court.

Now, the first part of the tape is a recitation of Mr. Maynard's testimony given at the trial. The tape runs approximately seven or eight minutes in total.

The second part of the tape is the Judge's explanation of the law.

JUDGE COFFIN: Why do we have to hear the first part of the tape?

[29] MR. DE PUY: It's easier to perhaps hear the whole thing.

THE CLERK: Exhibit No. 3.

(A tape recording was played for the Court.)

(Questions by Mr. DePuy)

Q. Can you tell us what happened?

A. Yes. During the conversation, the tape ran out.

JUDGE COFFIN: Is that all?

JUDGE BOWNES: Is that all for that tape?

MR. DE PUY: That's all for that tape, yes, Your Honor.

JUDGE GIGNOUX: Just so the record is clear, do we understand correctly that the discussion concerning counsel occurred prior to what we heard on the tape?

MR. DE PUY: Yes, I believe that is the case, Your Honor.

JUDGE BOWNES: And, evidently, his discussion with the Judge about an appeal must have occurred after the tape ran out.

MR. DE PUY: I think that is the case, yes, Your Honor.

(Questions by Mr. DePuy)

Q. Mr. Maynard, at the hearing on January 31, 1975, after your initial sentence of the $50.00 fine and six months' suspended sentence, did the Court advise you of your right to appeal at that time?

A. Yes. They told me if I disagreed with the Court's finding, I could make an appeal.

[30] JUDGE BOWNES: When was this?

THE WITNESS: After he sentenced me. No, he fined me. He says $75.00 fine.

JUDGE BOWNES: What date was this, Mr. DePuy?

MR. DE PUY: January 31, 1975.

(Questions by Mr. DePuy)

Q. And what exactly did he say?

A. Well, he says, he explained to me that I find you guilty, and that he told me he is asking $25,00[sic] that he suspended last time, and $50.00 fine. And then he says "The other offense is continued for sentence."

And then he says "Court adjourned." And he walked out. I went to the Clerk, and I told him—

Q. I mean, as to appeal, what do you recall his exact words as to appeal?

A. After he found me guilty, and he gave me the sentence, he says "If you don't agree with the Court's finding, you can make an appeal."

Q. Did he mention getting a lawyer to you?

A. I don't remember. He might have said that, yes.

Q. Were you represented by counsel at that time?

A. No, sir.

Q. Were you personally familiar with the rights of appeal in New Hampshire in the manner in which appeals are taken?

A. No, sir, I'm not too familiar with it.

[31] JUDGE GIGNOUX: On that January 31st appearance, this is the second time you appeared, was there any discussion between you and the Judge at the start of the hearing as to whether you wished a lawyer or not?

THE WITNESS: Yes, sir. He asked me if I wanted to be represented by counsel, and I said no, sir, that I would represent myself.

(Questions by Mr. DePuy)

Q. Other than taping over the plate, have you sought other solutions to your problems and your objection to the motto on the plate?

A. Yes, sir. I went to the Motor Vehicle Department, and there I was under the impression that my wife made application for commercial plates, and it was understood that we would be able to get it. And so, when we received our plates, it was the same old plates, the county plates, "Live Free Or Die" motto. We were very disappointed. We went to the automobile department and asked to see Ann Waters, I believe, and she wasn't available, but the clerk told me that she was in conference. When she came back, Miss Waters advised the clerk we should go see the Commissioner upstairs. So I went to see the Commissioner, and I told him about the problem, and I brought a tape recorder with me to record the conversation. And then he advised me to put the plates on the car and that if I wanted commercial plates, I would have to get a truck.

[32] Q. But you were willing to obtain commercial plates?

A. Yes, sir.

Q. I would like to briefly discuss other activities of a symbolic nature with you, Mr. Maynard. And, specifically, your children are in school. Do they pledge allegiance to the flag?

A. No, sir. The Constitution of the United States gives us that right to abstain pledging allegiance to the flag, because it is an act of worship, so it would be a conflict to our worship and teaching. One method we use pledging to the flag is my children remain seated. We feel, by them being seated, it would be a visual manifestation of their belief, because we know, by standing up, it doesn't show anyone or doesn't bear witness to the fact that they are not taking part in the pledging of allegiance to the flag. And my wife and I do the same thing. We attend school

meetings, and they open up their meeting by a pledge of allegiance. We sit down.

Q. Are you fluent in other forms of communication besides oral communication, sign language?

A. Yes. I have helped three different people through the sign language by speaking without verbal conversation, with the sign. I have helped three people become Jehovah's Witnesses.

Q. How would you describe your ability to write?

A. Well, I have a handicap as far as writing, because I never finished school. I went as far as the ninth grade. And all my writing is very—it is embarrassing at times, but I have to

[33] look up almost every other word in the dictionary in order to make an accurate expression of writing letters. My wife gives me a big help. She writes all the bills and checks. She does all the writing, because I have a handicap.

Q. Is it common to you to communicate by a tape recording?

A. I do this quite frequently if I want to make a record as to what is being said.

Q. Besides the tape over the motto on your license plate, is there any other stickers or things of that nature on your car?

A. Yes. Being a printer, I designed and made up a bumper sticker with a slogan, "Support a Parental Government," which is directed to God's kingdom.

JUDGE BOWNES: A parental—

THE WITNESS: Yes, a parental.

(Questions by Mr. DePuy)

Q. Is this an example of that bumper sticker?

A. Yes, it is. As a matter of fact, it gives you the illustration of the Bible. It gives you the scriptural Lord's Prayer, which is recorded in Matthew 6, Chapter 9 to 10 verse, and Daniel's 2:44, God consuming things. The reason I call it parental government is the father is life-given, Jehovah, God, being life-given. This is the title he has in our father. And Jesus illustrated this in his prayer, Our Father in Heaven. Father is not a name, but it is a title. And God is not a name but a title, also. But the

[34] Bible says that God's name is Jehovah, which is recorded in Isaias or Psalms 83:18, but this is a parental government. And it says here, if you support this, you enjoy peace forever. And this illustration here of the mother hen, Jesus used this in the Bible: how often did I want to gather you people like a mother

hen with a chick, put you under my wings and protect you and have a parental protection. This is to illustrate.

And I also darkened one of the little chicks to show you I am not prejudiced on desegregation.

MR. DE PUY: Thank you.

I would like to have this introduced as Plaintiffs' Exhibit No. 4.

THE CLERK: Plaintiffs' Exhibit No. 4.

JUDGE BOWNES: Bumper sticker.

JUDGE COFFIN: No. 4 has been admitted. No. 3 is for identification.

(Questions by Mr. DePuy)

Q. Is there any other sticker on your car besides that?

A. Yes. I have a decal which has a circle and a square, and this—it doesn't say anything, just a circle and a square. And everyone who recognizes this circle and square would know that it identifies us as square dancers. So my wife and I, for our entertainment,we belong to a club that is Circle 8 in Claremont, New Hampshire, and we enjoy Saturday evening square dances at different clubs in the State, and so forth.

[35] Q. You stated that you would not drive your car with this slogan on your license plate. If you couldn't drive your car, what would happen to your employment?

JUDGE COFFIN: Now, again, didn't we go into this at the preliminary hearing in detail? That was the big issue, or one of the issues, irreparable harm.

MR. DE PUY: Yes, Your Honor. If the State will admit—

JUDGE COFFIN: They have already agreed that the transcript is part of the proceedings in this case.

MR. DE PUY: I have no further questions, Your Honor.

CROSS EXAMINATION

(Questions by Mr. Johnson)

XQ. Mr. Maynard, I believe you testified under direct examination that your taping of the motto on the State license plate was "a public declaration of my faith," is that correct?

A. Yes, sir.

XQ. And you just testified as to other means of communication that you have available to you, such as speeches, printing of slogans, even sign language. You would concur with me that there are other means for you to state your disagreement with the slogan other than your taping the slogan over on your license plate?

A. You are asking that there are other means, but not my preference.

XQ. All right. But there are other means?

[36] A. Yes.

XQ. There is nothing to prohibit you from giving a speech relative to your disagreement with the slogan?

A. I object to that for the reason it is a negative way of expressing. I would rather be positive.

XQ. And there is nothing to prevent you from printing a bumper sticker relative to your disagreement with the slogan?

A. Well, I have printed a bumper sticker.

XQ. And this bumper sticker, which you placed into evidence, is this printed because you disagree with the slogan "Live Free Or Die"?

A. No, sir.

XQ. But you could print a bumper sticker relative to your disagreement with the slogan "Live Free Or Die," could you not?

A. Yes, but the State would object to it.

XQ. What makes you say that?

A. Well, if I had a bumper sticker to show my objection to the "Live Free Or Die," I would have an illustration of a dog raising his leg on the State motto.

XQ. And do you feel that there is any law which you would be breaking if you were to make such a bumper sticker and adhere it to your car?

A. It wouldn't be very dignified.

XQ. So there would be no law that you would be breaking if you were to make such a bumper sticker and adhere it to your

[37] car, would there, to your knowledge?

A. That's right. I wouldn't be breaking a law, that's correct.

XQ. At the time that you placed the tape over your license plates, where were the vehicles situated?

A. At the time I put the plates on, they were on my property, in my driveway.

XQ. Were there any members of your family watching you?

A. I can't recall. I think my children were there, yes.

XQ. Your wife was not?

A. I can't recall. No, she was in the house.

XQ. Were there any neighbors present?

A. That I couldn't tell you, if there were or not.

XQ. And did you make any statement to your children at the time you placed the tape over the motto?

A. I can't recall that, if I made a statement.

* * *

[39] XQ. Are you a Jehovah's Witness?

A. Yes, sir.

XQ. Are you a baptized Jehovah's Witness?

A. Yes, sir.

XQ. Are you a member of a Jehovah's congregation or church?

A. No, sir.

XQ. Why not?

A. Well, the reason for this is because I have been expelled or excommunicated.

XQ. Isn't the correct word disfellowshipped?

A. Yes, disfellowshipped is the same, synonymous with expelled or excommunicated.

XQ. And why were you disfellowshipped from the church of Jehovah's Witnesses?

A. Why I was disfellowshipped? Because I asked for an open hearing of a court case that they had. There was charges brought to me behind closed doors. I was disfellowshipped by a line committee, and I asked for an open hearing in front of the congregation, because I had nothing to hide. And, therefore, they disfellowshipped me because they say I caused dissension in the congregation by asking questions.

[40] XQ. And in what fellowship or church did this occur?

A. This happened in Concord.

XQ. And you were disfellowshipped from that church?

A. Yes. What does that have to do with the "Live Free Or Die" motto?

XQ. Then you came to New Hampshire, and you became a member of the Jehovah's Witnesses Church in Claremont, New Hampshire?

A. No, sir. I was never a member there.

XQ. And why did you never become a member?

A. I went to the Claremont Congregation asking for help because of problems I was having on [sic] Concord, and they said they refused to help me. They told me to go back to the

people who, you know—I told them, I says, "Look, if somebody steals a television, I call the police. You straighten it out with them." They tell me to go back to the people and straighten it out with them. They—

XQ. Did you ever go to any religious meetings of Jehovah's Witnesses in Claremont?

A. Yes, I have.

XQ. And were you ever charged by the Elders of that
[41] church with disturbing the peace, and did the Elders of that church sign criminal complaints against you for disturbing the peace during a religious meeting of the Jehovah's Witnesses Church in Claremont?

A. That's true, but they lied.

XQ. Do you recognize those?

A. No, I don't recognize any of these.

(Document handed to Mr. DePuy by Mr. Johnson.)

MR. DE PUY: No objection.

THE WITNESS: What is it? I don't know what it is.

JUDGE COFFIN: This material we are doing now, was this covered in the preliminary hearing?

MR. JOHNSON: No, it was not, Your Honor.

The State offers two criminal complaints, Claremont District Court, relative to the issue of sincerity and credibility in this case.

JUDGE BOWNES: All right.

THE CLERK: Exhibit 5.

JUDGE COFFIN: They may be marked as one exhibit. I think there are two different dates. Well, A and B. Exhibit 5A and 5B.

JUDGE BOWNES: Go ahead, Mr. Johnson.

MR. JOHNSON: Thank you.

(Questions by Mr. Johnson)

XQ. Do you object to mottos generally, Mr. Maynard?

[42] A. No, sir, not at all.

XQ. And you don't object to the motto "In God We Trust"?

A. No, sir.

XQ. And you don't object to the motto "E Pluribus Unum"?

A. I'm not familiar with that one, sir.

XQ. To your knowledge, do Jehovah's Witnesses, other than yourself, object to the motto "Live Free Or Die"?

A. No, sir, I don't know that.

XQ. There are many other Jehovah's Witnesses within the State of New Hampshire, to your knowledge?

A. I believe so, there is.

XQ. And, to your knowledge, many of them operate motor vehicles with non-commercial license plates in New Hampshire?

A. As far as I know, yes, sir.

XQ. What do the words in the motto "Live Free" mean to you?

A. Well, it means that a person should be able to—but the motto doesn't say "Live Free," it says "Live Free Or Die."

XQ. Please answer my question.

A. Could you ask the question again, please?

XQ. What do the words "Live Free" in the motto mean?

MR. DE PUY: Your Honor, I would object. I think the motto has to be taken as a whole in the abstract. The question as to what "Live Free" means—

JUDGE COFFIN: Well—

MR. DE PUY: I don't think he can break that motto up. I
[43] think all four words mean something to Mr. Maynard.

JUDGE COFFIN: This is cross-examination. Objection is overruled.

(Questions by Mr. Johnson)

XQ. What do the words "Live Free" mean to you?

A. Well, "Live Free" is to have a choice of religion, a choice of government, living free to have religious instruction for your children without being intimidated or discriminated against.

XQ. Does it mean live free in spirit or conscience to you?

A. Well, to go to Kingdom Hall to receive religious instruction, that's a literal sense, isn't it. It's just not symbolical or spiritual.

XQ. So "Live Free" may mean many things to you?

A. To me, sir?

XQ. Yes.

A. Live free from bondage, yes. Freedom means, to my understanding, a free conscience like I exercised it. I demonstrated this belief of what is free by freely taking upon myself to put the tape on the State Motto.

XQ. And would you agree that "Live Free" may mean other things to other people?

A. Yes, I agree upon that.

XQ. Just several other questions.

Is it fair to say that, at the outset of your two criminal trials
[44] relative to the violation of your usage of your motor vehicle plates, you were informed by the District Court Judge that you had the right to counsel?

A. Yes.

XQ. And, at the conclusion of the hearing on January 31, 1975, you were informed of your right to appeal from the adverse decision?

A. Not before the sentence, no, after the sentence, I was not advised.

XQ. Before the sentence, you were advised?

A. Yes, sir.

XQ. Did you understand in these criminal hearings the fact that you did have the right to counsel?

A. Yes, I had the right to counsel.

XQ. And were you informed that, if you could not afford counsel, the Court would appoint counsel for you?

A. Yes.

XQ. And did you understand it?

A. Yes.

XQ. All right. And it is a fact, is it not, that you were not, at the time of your second hearing, indigent, that is to say, without money?

A. No, I wasn't without money.

XQ. You did have finances?

A. Yes. The Judge asked me if I was going to pay the fine,
[45] and I said, "No, sir."

He says "Why, are you poor?"

I says "No, because, if I pay the fine, I would be admitting to a guilt that I feel I am not guilty of."

XQ. And your decision not to retain legal counsel was your own decision?

A. It was my free choice.

MR. JOHNSON: Right. Thank you.

REDIRECT EXAMINATION

(Questions by Mr. DePuy)

Q. Mr. Maynard, what is your understanding of what that motto is meant to mean on the license plates?

A. Well, my understanding of the motto is that, if a person is not free that he should give up life, he should commit suicide.

Q. For what purpose was that motto put on, to your understanding?

A. Well, from what I understand, the Legislature passed this bill, which is mentioned here in the news clipping of an interview of Mr. Lawton, who is one of the Legislators, and explains that in a telephone interview that the sponsor of the "Live Free Or Die" motto for license plates because the Legislature—the reason he wanted to pass this is to let people, he wanted people from other states to know that New Hampshire residents believe in fighting for democracy. And I do not
[46] believe in fighting for democracy. I believe in fighting for theocracy, which means God's rule.

Q. And you were quoting from an article that appeared in the Sunday Globe of March 23, 1975?

A. Yes, sir.

* * *

[47] Q. With regard to those two criminal complaints, with regard to the Claremont congregation, could you tell the Court what the basis of those complaints was, what action were you taking at the congregation, at the Hall?

A. Well, actually, I had deaf mute citizens living with me. When they moved up, they wanted to live with us and share expenses. They were studying the Bible with me and wanted to become Jehovah's Witnesses. I bring them with me to the congregation and translate. We are sitting in back of the congregation where no one would see us and translate word for word what they were saying so they could receive instructions. So the so-called Elders came up to me and said they didn't want me to do that, because I was a disfellowshipped or excommunicated person.

I says, well, I asked them to get somebody else to do it so these people can receive instruction. They says No."[sic]

I says "I can't stop doing this, because I feel responsible for these people."

I have a tape recording of the conversation between these people behind closed doors, and they admitted and they agreed that I could sign. But during the conversation they also said that the reason I don't comply with their thinking is that they are going to use legal means to prevent me from coming to the Hall.

[48] And I says "Well, you can do whatever you want." I says "You won't succeed."

And so they—their complaint is the fact that I caused disturbances by translating to the deaf mute in the Kingdom Hall. And so, not one time was the meeting interrupted because of this. But they interrupted the meeting by having the officer come in and have me under arrest. They interrupted the services. And I was sitting in the front of Kingdom Hall with my two children. They were asking questions and answers in front of one hundred fifty people. The officer came in and said "You are under arrest."

I says "There's no disturbance."

MR. JOHNSON: For the record, on the complaint dated September 10, 1972, the complaint records the plea of not guilty and shows no finding made.

MR. DE PUY: That's all I have.

JUDGE COFFIN: We will take a short recess.

There is no recross, I take it, Mr. Johnson?

MR. JOHNSON: No.

* * *

[50] AFTER RECESS 11:35 A.M.

MR. MIDDLETON: May it please the Court, at this time we were going to call Mrs. Maynard, and Mrs. Maynard would testify as I am going to state. I understand that the State of New Hampshire may stipulate to what her testimony would be in order to shorten the proceeding.

Mrs. Maynard, according to the stipulation that is already filed, is a co-owner of the automobile in question. She would testify that she shares her husband's religious beliefs. She has already lost her position that she held at the time that these matters began and feels threatened as a result of the more than a mere possibility of prosecution of herself if she operates the motor vehicle with the motto "Live Free Or Die" covered over in accordance with the testimony that has been received. That would be the sum and substance, Your Honors, of her testimony.

JUDGE COFFIN: We have one factual question that we would like the answer to, and that is whether—we don't know whether it is relevant or not—but whether, at the time of the

convictions in January of '75, was the tape shown to us on the license plate on the exhibit that we have, was that the kind of tape that was on the plate in those earlier convictions?

MR. DE PUY: Yes.

MR. MIDDLETON: Yes, Your Honor, it was a non-transparent either orange or red tape.

[51] Mr. Kohn also tells me that, at the time of the original prosecutions, Mr. Maynard had punched out the words "Or Die" on the license plate, the area that was covered by it, where those words were contained were covered by tape, but the words themselves had actually been punched out of the plate.

JUDGE COFFIN: And what counsel has just represented is accepted by the State as the substance of Mrs. Maynard's testimony had she personally testified?

MR. JOHNSON: The State will agree to that, Your Honor, with the qualification with regard to the fourth substantive item stated, that is, that Mrs. Maynard feels threatened if she drives the automobile with the motto taped over. I reiterate that because that is the degree to which the State will agree that she may feel threatened.

JUDGE BOWNES: Well, you agreed earlier that there is a threat of prosecution against either of them if they drive the automobile with the motto taped over. I thought you stated that earlier.

MR. JOHNSON: The law, Judge Bownes, as I understand it, is that a person is guilty of an offense who knowingly obscures or permits to be obscured the figures or letters on any number plate attached to any motor vehicle. If Mrs. Maynard were herself to obscure or to permit to be obscured the State Motto—

JUDGE BOWNES: All right.

[52] MR. JOHNSON: That is the distinction I am making. If she wasn't the one who committed the act, she would not have committed the crime.

JUDGE BOWNES: Thank you. I understand now.

MR. MIDDLETON: Just to make it clear for the record, our testimony would be Mrs. Maynard permitted to be obscured these words on the license plates on the car of which she is a co-owner.

JUDGE COFFIN: Very well. Then we take it that this stipulation as to what the testimony would be is satisfactory.

MR. JOHNSON: Yes.

JUDGE COFFIN: You may proceed.

MR. MIDDLETON: The plaintiff rests. The plaintiff has no further evidence at this point.

MR. JOHNSON: The State calls Fred Clarke to the stand.

FREDERICK N. CLARKE, JR.

called as a witness in behalf of the State, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

(Questions by Mr. Johnson)

Q. Your name, please.

A. Frederick N. Clarke, Jr.

Q. And your employment?

A. Director, Division of Motor Vehicles, Department of Safety.

[53] Q. How long have you been so employed?

A. As the Director, since 1970.

Q. When did the State Motto first appear on our license plates in this state?

A. 1970.

Q. And, prior to that time, were there any words other than New Hampshire on the license plates?

A. In 1957 to 1962 there was the word "Scenic." In 1963, "Photoscenic." In 1964 to '69, "Scenic."

MR. JOHNSON: If it may please the Court, the various license plates which the State offered earlier in this hearing, the State would like to offer again at this time, with no objection, as I understand it, from counsel for the petitioners, the State feels that they are material to this case relative to the next witness the State will call.

JUDGE COFFIN: They may be admitted without objection.

MR. DE PUY: No objection.

JUDGE BOWNES: Exhibit No. 6.

THE CLERK: Twenty license plates.

JUDGE COFFIN: Call those Defendants' Exhibit No. 6, to keep up the series of numbers, but identify this as a defendant's exhibit.

JUDGE BOWNES: All right, Mr. Johnson.

(Questions by Mr. Johnson)

Q. Mr. Clarke, those plates that have been marked Exhibit

[54] No. 6 constitute, if I am correct, a random sampling of plates

issued by your department to motor vehicles registered in New Hampshire?

A. This is correct.

Q. Are you, in your capacity as Director of Motor Vehicles for the State of New Hampshire, familiar with plates from other jurisdictions, that is, other states in the Union?

A. Yes. We receive these yearly.

MR. JOHNSON: Your Honor, I would offer a series of plates from other states in the Union, and I believe counsel for the petitioners have no objection to these being offered.

JUDGE COFFIN: They may be admitted as Defendants' Exhibit No. 7.

JUDGE BOWNES: How many are there?

MR. JOHNSON: Eleven.

JUDGE GIGNOUX: Is "Vacation Land" in there?

THE CLERK: No, I don't think so.

JUDGE GIGNOUX: Discrimination.

MR. JOHNSON: We have intentionally excluded both our sister states to the east and west, Your Honor.

(Questions by Mr. Johnson)

Q. Commissioner Clarke, will you comment upon the problems, if any, which would be raised in your department if it were to become discretionary with an applicant for motor vehicle license plates as to whether or not the motto were to

[55] appear on his or her license plates?

A. Well, there are actually two reasons. Our license plates are made at the State Prison approximately two years in advance of the registration period. And the other one is we have designations at the top of the plate spelling out different types of plate.

Q. When will the next license plates be manufactured at the New Hampshire State Prison?

A. At the present time, I couldn't actually say, because the next two years we know we are going to decals, and they will be using the same plate they now have at the present.

Q. So it will be at least two years before new metal plates are actually made?

A. At least.

Q. Now, would there be any administrative problems relative to whether the motto appears on a plate or does not appear on a plate?

A. Well, I would have to say, from the standpoint of changing any dies at the State Prison, there definitely would be an

administrative problem, because they go up there in sequence. And, when we give them, which will be in probably about a year, it takes them about two years to give us one issue. We would have to know well in advance of maybe even three years.

Q. And how many license plates were issued in New Hampshire for the calendar year 1974?

[56] A. All told, approximately 526,000.

MR. JOHNSON: Thank you. The State has nothing further.

CROSS EXAMINATION

(Questions by Mr. Middleton)

XQ. Mr. Clarke, the license plates of New Hampshire that have been marked don't represent all the varieties of New Hampshire license plates, do they?

A. I don't think so. I have a sheet here. There's all the ones that we make at the department.

MR. MIDDLETON: I would like to offer this sheet that Mr. Clarke just produced. It shows all the license plates.

MR. JOHNSON: Fine. The State has no objection.

MR. MIDDLETON: May we have that marked, Your Honor?

JUDGE COFFIN: Yes. Do you object to that being a defendant's exhibit? Do you want this to be a plaintiff's exhibit?

MR. MIDDLETON: It doesn't matter to me.

JUDGE COFFIN: Mark it Defendants' Exhibit No. 8.

JUDGE BOWNES: What is on that sheet, Mr. Middleton?

MR. MIDDLETON: All the license plates the State of New Hampshire issues.

JUDGE BOWNES: All of the types?

MR. MIDDLETON: All of the types, yes.

(Questions by Mr. Middleton)

[57] XQ. Mr. Clarke, do you know how many different types the State does issue?

A. Well, in this area here, we try to keep the number here, the last number here, which we call plate 9,999. These two plates here would approximately be 325,000. All the rest are the numbers that are issued in each one.

XQ. All right. What I was interested in was the number of varieties that you show here on this sheet. Have you ever counted the number of different kinds of plates that New Hampshire issues?

A. No, I have never counted them.

XQ. O.K.

For motor vehicles, there's thirty-seven different plates. Does your count equal mine?

A. Thirty-nine.

XQ. Thirty-nine, O.K.

You have a sheet, I mean one list of plates which are issued to boats, and this type of thing we are not involved with today, right?

A. Right.

XQ. All right.

Now, of the thirty-nine different license plates the State issues, on how many license plates does the motto appear?

A. I would say about 325,000.

XQ. All right. But how many different types out of the
[58] thirty-nine?

A. There's only one type, as we call it, which would be the passenger car type.

XQ. O.K.

It's only on passenger car license plates that the motto appears, correct?

A. Right.

XQ. Now, one of the types of passenger car license plates that the State issues is a so-called vanity plate, is that correct?

A. Right.

XQ. And, for the benefit of the Court, this is a license plate that you customize, you produce it to satisfy an order of a particular individual, is that right?

A. Yes, that would be true.

XQ. If I wanted my initials on a license plate, I can order that. And, assuming that you haven't produced that plate for somebody else, you will produce that for me for a fee of $5.00, is that right?

A. Right.

XQ. And I assume this is something of a revenue measure, is that right?

A. All the money goes to driver education.

XQ. But the State does this to produce some income, is that right?

[59] A. That's correct.

XQ. Now, the usual license plate is the so-called County plate that is for non-commercial vehicles with the letters indi-

cating the county and then a number following that, is that right?

A. That is correct. There are 9,999, to begin with, and then we go to the letters.

XQ. And looking at your list—

JUDGE COFFIN: I didn't understand that. 9,999?

THE WITNESS: Without letters. These are called numerical. Start with 1 and go through 9999, with no designation as to which county they are in.

(Questions by Mr. Middleton)

XQ. Just so this is clear to the Court, this is a typical non-commercial license plate, is that correct?

A. Yes, sir.

XQ. On the extreme right-hand side of the plate, the H and E designate the County, is that correct?

A. They did up until last year.

XQ. O.K.

Well, up until last year, at least, this would have indicated that this car was registered in Hillsborough County, is that correct?

A. That's correct.

XQ. And then, following the County designation on this
[60] particular plate, are four numbers?

A. Right.

XQ. And what you are saying is that, before you start putting on the County designation, you issue 9,999 plates?

A. Right.

XQ. Then the letters start over here?

A. That's correct.

XQ. And so there are 9,999—

JUDGE BOWNES: That is 9,601.

MR. MIDDLETON: That has an initial on it.

JUDGE COFFIN: There is a plate that has 9,601 on it.

THE WITNESS: Yes.

JUDGE BOWNES: I see.

(Questions by Mr. Middleton)

XQ. You start with the letters?

A. That is not a typical plate. You will find one with letters that go across. We ran out, so we had to go to this here you are showing now.

XQ. Are the only kinds of license plates with both letters

and numbers those which are issued to passenger cars, non-commercial vehicles?

A. I would say that the majority are. There are a few commercial vehicles that do have initial plates, which we call the prestige plate, that you pay a fee of $5.00.

XQ. O. K. That is what I was referring to, is a vanity plate?

[61] A. Right.

XQ. Apparently, in the selection that we have here, we don't have the other kind of passenger venicle [sic] plate but which you were saying is the H and E would run?

A. Run parallel to the plate.

JUDGE BOWNES: What does the "E" stand for?

THE WITNESS: Start out with H and go up through.

(Questions by Mr. Middleton)

XQ. Again, the only kind of a plate you manufacture out of these thirty-nine different kinds that have both letters and numbers, other than a vanity plate, is the typical passenger car plate, is that correct?

A. That's right.

XQ. And, also, this is the only kind of plate that has "Live Free Or Die," as a practical matter?

A. That's correct.

JUDGE BOWNES: You said last year there were 320,000?

THE WITNESS: Approximately.

JUDGE COFFIN: Only the passengers have letters and numbers?

THE WITNESS: Right.

JUDGE COFFIN: What do the others have?

THE WITNESS: There are designations at the top with just numbers.

[62] (Questions by Mr. Middleton)

XQ. The others have only numbers. In other words, the one that seems to be here on the top is antique, and this would be typical, that it has only numbers on it?

A. Right.

JUDGE BOWNES: That means an antique car?

THE WITNESS: Yes, sir.

(Questions by Mr. Middleton)

XQ. One exception seems to be repair, which has an "X" on it?

A. Has "X," "Y" and "Z," yes.

XQ. And Junk seems to have a "J"?

A. That's right.

XQ. And, again, that is on the opposite side, is it not?

A. Well, dealer plates that have initials starting at the front, also.

XQ. Is that right on the front?

A. Yes. On the back, too.

XQ. And the dealer plates, they would have a single letter, is that right?

A. They have a single letter, either starting on the front or the back.

XQ. So, again, this kind of a plate is the only one with two letters?

A. That's correct.

[63] XQ. Now, if, as I understood your testimony a moment ago, it is important, these plates are issued by the State primarily so that you can identify the vehicle, isn't that right?

A. That is correct.

XQ. And, as I understood your testimony to Mr. Johnson a moment ago, you testified that if the "Live Free Or Die" were blanked out on this kind of a plate, it would make identification difficult, is that your testimony?

A. I would say it would in most cases because of the fact that you still have 9,999 with about twelve different categories.

XQ. O. K. But if it was one of that three hundred some odd thousand plates that are issued with the two letters on it, obviously, whether that "Live Free Or Die" appears there or not, this particular kind of a plate is readily identifiable, isn't it?

A. That is correct.

XQ. No identification problem so far as that particular kind of a plate?

A. No.

XQ. Are you familiar with the provisions of Chapter 263:1, which requires that every motor vehicle be operated with plates?

A. Yes.

XQ. And that is also the chapter and verse that requires that the State Motto be put on these plates, is that not correct?

[64] A. That is correct.

XQ. And would you read with me for a moment and see if I am reading this correctly that this particular statute requires that number plates for non-commercial vehicles shall have the State Motto "Live Free Or Die" written thereon, is that correct, is that what it says?

A. Yes.

XQ. And, as a matter of fact, there are a great many non-commercial vehicles operated in the State of New Hampshire without that motto on it, isn't that correct?

A. I would say no.

XQ. Well, let's look at some of them. And, in particular, that motto does not appear on that; that is a non-commercial vehicle, is it not?

A. Right. But there's only 700. You said a great majority. I can't feel that 325,000—there are a few in that area, but not a great majority.

XQ. But you will agree with me that, currently, there are a number of motor vehicles being operated in the State of New Hampshire with license plates, non-commercial vehicles with license plates, that do not bear the motto "Live Free Or Die"?

A. I would agree.

MR. MIDDLETON: Thank you.

REDIRECT EXAMINATION

(Questions by Mr. Johnson)

[65] Q. Mr. Clarke, the Attorney General of the State of New Hampshire has a license plate saying Attorney General, does he not?

A. Yes, sir.

Q. And does the motto appear on that?

A. No.

Q. There is no special license plate for Assistant Attorney General, is there?

A. Not at present.

Q. And the Judge of the United State District Court for the District of New Hampshire, is there a special license plate for that Judge?

JUDGE COFFIN: Other than antique.

JUDGE GIGNOUX: Or junk.

THE WITNESS: I do not feel we have one at this time.

JUDGE BOWNES: I will state for the record that my license plate says New Hampshire Judicial. And there is no State Motto on it. It, of course, means that New Hampshire Judicial is much superior to the judicial situations in Maine.

MR. JOHNSON: Thank you, Mr. Clarke.

The State has nothing further.

JUDGE BOWNES: I don't think it is a special plate, because I have to apply every year and pay $5.00 for it.

THE WITNESS: We call it initial plate.

MR. JOHNSON: Just one question.

[66] (Questions by Mr. Johnson)

Q. Mr. Maynard testified he discussed with you the matter of obtaining a commercial plate for a station wagon. Did you ever have such a discussion with him?

A. I think Mr. Maynard talked with the Commissioner of Safety, and I never met Mr. Maynard and never had a discussion with him.

JUDGE BOWNES: Judge Gignoux has a question.

JUDGE GIGNOUX: I am trying to clarify your plate. Does it have numbers?

THE WITNESS: No.

JUDGE BOWNES: Judicial 1 is retired Judge Blandin. and initial 2—

JUDGE GIGNOUX: This is one of the vanity plates?

THE WITNESS: We have to have a special die.

JUDGE GIGNOUX: Do any vanity plates have the motto on it?

THE WITNESS: Those three don't. Anyone who has initials or a name on it has the motto.

MR. MIDDLETON: Could I ask one further question?

RECROSS EXAMINATION

(Questions by Mr. Middleton)

XQ. You were asking Mr. Clarke about the vanity plates. I take it that people order these vanity plates and received delivery on them the same year. They don't have to wait two or three

[67] years to get a vanity plate?

A. We issue a paper plate, to begin with.

XQ. And it takes a matter of a month or two to get the metal?

A. I would like to say it takes in the vicinity of ten days or thirty days, depending on the present industry.

XQ. As far as the cost of this is concerned, how much does it cost to do this; $5.00 is the total charge to the individual for the vanity plate?

A. Right. It is called a service fee of $5.00. It goes completely to the driver education fund, so ear-marked.

XQ. Somebody in the State Prison has to set up a certain die to make this plate?

A. That's correct.

XQ. Presumably, the person to make up the die, to make

the initial die, could remove the die that says "Live Free Or Die"?

A. I would say so.

JUDGE GIGNOUX: Would it take more than ten days to get a plate without "Live Free Or Die"? Any reason it takes more time than it takes to make a vanity plate?

THE WITNESS: No, I wouldn't say it would take any more time.

JUDGE COFFIN: Thank you.

(The witness left the stand.)

MR. JOHNSON: The State has one final brief witness. Chief Wooley.

[68] NEIL WOOLEY

called as a witness in behalf of the State, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

(Questions by Mr. Johnson)

Q. Your name, please?

A. Neil Wooley.

Q. And are you the Chief of Police in the Town of Lebanon, New Hampshire?

A. Yes, I am.

Q. And for how long have you been the Chief of Police?

A. Slightly over three years now.

Q. Are you the local prosecutor who prosecuted the complaints before the Lebanon District Court against Mr. George C. Maynard?

A. The first one.

Q. Chief Wooley, how long have you been a police officer in New Hampshire?

A. Approximately nine and a half years.

Q. Is it fair to say that part of your work as a law enforcement officer is the identification of motor vehicles through their license plates?

A. Yes, it is.

Q. If a piece of non-transparent tape appears across the top of a license plate, as appears in Petitioners' Exhibit No. 1,

[69] would you comment upon any difficulty you might have in identifying that vehicle?

A. Yes. The designation has been pointed out, such as the

word commercial, tractor, trailer, antique, these are all visible means by which myself, as a police officer, would be looking for on a plate attached to any vehicle. There are numerous occasions where people use what we commonly refer to as a screw-driver transfer, where any set of plates or plate may be attached to a vehicle that is not assigned to that vehicle. The specific occasion that I personally was involved in was the use of I believe it was a trailer plate attached to a motor vehicle, a pleasure car. The fact that the word "trailer" was visible gave me an immediate indication that that plate did, in fact, not belong on a pleasure car. And without the words or some distinguishing marks, it becomes more difficult for a police officer to visually look at a car and a plate, or whatever the vehicle may be, and determine whether or not that plate may, in fact, belong on that vehicle.

Q. I presume that some of your work relative to the identification of vehicles through their license plates is undertaken during the nighttime?

A. That is correct.

Q. To your knowledge, are there other states having license plates with colors similar to this shade, to that of the State of New Hampshire?

[70] A. Yes, there are. Given the fact that we may change the color system from year to year, or periodically, there still are several states that, whether because of lighting conditions, dirty plates or weather conditions, whatever the case may be, other plates may be to a distance distinguishable—I'm sorry, undistinguishable as to the State.

Q. In other words, for the benefit of the Court, when our license plates are physically changed, instead of being white lettering and figures on a green background, we have green letters and figures on a white background?

A. That is correct.

Q. And the State of North Dakota, in 1975, has a white background with green letters?

A. That's correct.

Q. Does the motto "Live Free Or Die," as appears at the top of the license plate, facilitate in any manner your ability to identify a motor vehicle as having been or being registered in New Hampshire?

A. Yes, by virtue of the fact that I know of no other state

which issues a plate with that motto or those words attached to it.

Q. And, in particular, am I correct, based on what you just said, you could easily identify this as being a New Hampshire license plate because it has the motto "Live Free Or Die" as opposed to this which has the motto at the top, being a Ne-
[71] braska plate, "Cornhuskers State"?

A. That's correct.

JUDGE COFFIN: You are talking now about completely different colors. One is red on white, and this is white on green.

(Questions by Mr. Johnson)

Q. Or, for instance, North Dakota, which has at the top N. D., and at the bottom it says "Peace, Garden State"?

A. Yes.

* * *

[76] (Argument of Mr. Kohn.)

I want to emphasize that is not the situation we have here. We are not attempting to turn this court into an Appellate Court for its State convictions.

On the first two charges, Mr. Maynard was convicted. He served his time. By the time he came to me, as ACLU attorney for New Hampshire, February 28th, over thirty days passed, there wasn't even a possibility of bringing an appeal at that point.

With respect to the other pending prosecution, in all candor, I did not find out about that until after we appealed before you, Judge Bownes, and secured a temporary restraining order. I had understood all of the prosecutions were over with and Mr. Maynard served his time, and that was it. As it turned out, I was negotiating the State with an agreement statement of facts. They did send over a copy of the other pending State criminal actions, the first time I learned of it. But the fact remains that Mr. Maynard was never sentenced for that offense. And, under New Hampshire law, sentencing is a predicate to an appeal. So
[77] Mr. Maynard was forced into a situation where he either had to abjure his religious beliefs and drive the car with the motto on it or continue to drive with the motto covered up, for which he had been prosecuted three times, or leave the state.

JUDGE GIGNOUX: Couldn't he have made a motion, request that sentence be imposed, appeal from that sentence,

which I understand would then entitle him to a de novo trial under New Hampshire law, and have this question certified to the Supreme Court?

MR. KOHN: I think if Mr. Maynard had been represented by an attorney at the time—

JUDGE GIGNOUX: But he is represented by an attorney now.

MR. KOHN: That's correct.

JUDGE GIGNOUX: Could you go over to the New Hampshire Supreme Court and move for sentence at this time?

MR. KOHN: Yes, I suppose we could do that.

JUDGE GIGNOUX: Then appeal. Do I understand correctly there would then be a de novo trial in the Superior Court?

MR. KOHN: This is correct, Your Honor, which forms the basis for another argument that we have why Younger shouldn't apply in this case. The New Hampshire system, appellate system, is a two-geared system. No way you can try a case on the facts in the District Court and go directly to the Supreme Court with a record. Mr. Maynard would have to ask
[78] to be sentenced, which I think is a very unfair posture to put a defendant in a criminal case in, anyway. He would then be in a position to exercise his right to appeal to the Superior Court, where eventually he could secure a trial. That may consume four months or five months. And, if he lost in the Superior Court—

JUDGE GIGNOUX: I understand in Superior Court there is a procedure by which the Superior Court Justice could certify this question directly to the New Hampshire Supreme Court.

MR. KOHN: Yes, sir. The questions may be certified up, and I understand this can even be done in the District Court if justice determines it. The problem is you have no record. The District Court is not a court of record in the sense that a transcript is kept. And it seems to me terribly important, when you are making sophisticated arguments based on the free exercise clause, and based on other problems, that there be a factual record for the Court so that the Court can put the issues in a proper frame of mind.

JUDGE GIGNOUX: There would be a record in the Superior Court?

MR. KOHN: Yes. But if you went through a trial in Superior Court and had an adverse ruling, you might as well

take your normal appeal to the Supreme Court.

JUDGE BOWNES: Mr. Kohn, the real reason you haven't asked for sentence is the Hoskin case. You have that case staring you in the face. Isn't that the real reason you have
[79] come over here?

MR. KOHN: No.

JUDGE BOWNES: I am talking about the New Hampshire Supreme Court decision.

MR. KOHN: The reason I came over here is, at the time Mr. Maynard came to me, I understood he served his time, and the only prosecution pending—yes, you are right. The Supreme Court of New Hampshire has already indicated which way it would go on the questions, although it has not resolved the specific questions of Mr. Maynard's case, and that was not a consideration in my mind. You know, I had a right to go to the Federal Court. The issues could be raised here. And, when Mr. Maynard came in and, you know, the sensitiveness, I chose to file my case in Federal Court. Yes, it is true, I was aware of the Hoskin case. I know the New Hampshire Supreme Court has had similar issues before it, and I did make a choice to come here, which I believe is my prerogative.

Now, the other crucial point I want to make about the framework of our case here is that we are not asking for an injunction against any pending prosecution. And in every case that has been before the Supreme Court, perhaps except Hicks v. Miranda, which was decided in, I believe, the last decision day of the term, the defendant in a criminal prosecution had been convicted or couldn't seek what he felt was proper redress there and pled guilty in one case. And then, instead of utilizing
[80] the State appellate procedure, had gone into Federal Court and sought to enjoin the pending criminal action, or in one case to have his criminal records expunged. But, in every case, it was connected to a proceeding that was pending in State Court. It is not the relief that we are seeking here. We have asked the Court for prospective relief only that the Court declare that the statutes as applied to Mr. and Mrs. Maynard are unconstitutional and an injunction be issued to the Commissioner of the Motor Vehicles Department ordering him to supply him with a license plate that does not offend their religious beliefs.

As far as two of his prior convictions are concerned, he was convicted, served his time. As far as the case that is still pending, he had never been sentenced for it, and I understand

from brother New Hampshire counsel that the likelihood is he never will be sentenced on that charge. If he is sentenced then, and if this Court would uphold it and an injunction were to issue, I suppose at some point in the future we would be faced with making a res judicata argument in State Court or pursuing that case up through the State Court. It is highly speculative. I don't know what is going to happen, and I don't believe a defendant should go to the State Court and ask to be sentenced so he can exercise certain rights. I think that responsibility is on the part of the State, and neither the Court nor the prosecution has had any attempts to have him sentenced for an offense. And even if he were sentenced, it would still not solve the problem
[81] for future arrests, prosecutions, fines which would not be paid, and, inevitably, imprisonment. We would still be faced with that problem. I never heard of a case yet where a District Court in a criminal prosecution has issued an injunction against the State against future prosecutions pending eventual resolution in the State Court. As a matter of fact, the only other alternative I have been able to think of is, I suppose, we could have filed suit for declaratory judgment in the State Court and hope that would get resolved before Mr. and Mrs. Maynard were subjected to further criminal penalties. Again, there is certainly no requirement that be done. We chose to file in Federal Court, and I think we are properly here.

* * *

[84] But I do want to emphasize much is made of this, that by my theory it makes no difference whether Mr. Maynard was advised by Judge Lovejoy he had a right to counsel in the District Court or not. The essential thing is that he was not represented by counsel. You do not have an attorney making a calculated decision to try to get into Federal Court and use it as a State Appellate Court, and that is the crux of our argument that Younger doesn't apply.

JUDGE GIGNOUX: Well, the problem, one problem I suggest is that he did have counsel at the time this action was started, and counsel at that time made a calculated decision rather than requesting the imposition of sentence and appealing through the State process, he would come into Federal Court.

MR. KOHN: No, sir, that is not what happened. I want to make sure it is absolutely clear.

At the time Mr. Maynard came to me, and at the time we filed our complaint and applied for a temporary restraining order, I did not know about that third pending action. And, if I had known about it, in restrospect, I don't think it would have made any difference. The fact of the matter is I didn't know about it. And, when the Maynards came to me I thought we had a clear exception to the Younger problem here.

[85] O.K. We thoroughly briefed the merits of the case, and I am mindful that the Court is behind in its time. If the Court has any specific questions, you know, of us in terms of our free exercise claims or our First Amendment claims, I would be happy to deal with them, but I'm not sure it would be beneficial for me to repeat our arguments.

JUDGE GIGNOUX: I would like to clarify my own thinking. I understand you make basically two arguments. One is on Barnette principles.

MR. KOHN: Yes, sir.

JUDGE GIGNOUX: That the First Amendment free exercise clause protects the Maynards from having to affirm a motto or slogan they do not believe in, is that right?

MR. KOHN: That's right.

JUDGE GIGNOUX: That is one.

And the other is symbolic speech.

MR. KOHN: Yes, sir.

JUDGE GIGNOUX: Tinker v. DesMoines case, that line.

MR. KOHN: Yes, sir.

JUDGE GIGNOUX: That is not the free exercise clause you are speaking of?

MR. KOHN: There are two separate arguments.

JUDGE GIGNOUX: That is what, free speech?

MR. KOHN: That's right.

JUDGE GIGNOUX: Now, I noted when we heard this

[86] tape of the first District Court hearing there is no mention of symbolic speech by Mr. Maynard along the lines of his testimony here today, and it occurs to me that Mr. Maynard had not conceived of the symbolic speech approach until very competent expert counsel called his attention to Tinker and O'Brien and some of these other cases. Am I unduly suspicious?

MR. KOHN: No, sir, I think that Mr. Maynard has a sincere belief based on his religious grounds.

JUDGE GIGNOUX: I am not questioning his sincerity at

this point. But was he, at the time he acted here, was he doing anything other than covering up a motto which he didn't believe in?

MR. KOHN: I believe he testified to that, and I think—

JUDGE GIGNOUX: I know he did, but he didn't at the District Court hearing. You quarrel about his colloquy with the State Judge.

MR. KOHN: I can't answer that question, Your Honor, because I don't know, except from what we heard on the tape. I assume that is all he said. And I think that Mr. Maynard does see these things in a religious framework. Naturally, when we brought this action, you know, we tried to advance every legal theory that we could that would cover the situation. And, you know, I think that Barnette itself, which was originally conceived to be a case based on religious principles, has been further broadened in the Russo case in New York and the ears

[87] to expand the whole flag salute notion to a free speech issue, and I think the two things can be inextricably mingled and very difficult to separate out, whether it is a symbolic speech, you know, argument, or whether.

* * *

(Argument of Mr. Johnson.)

[94] JUDGE COFFIN: Supposing this case came up a year from now, and somehow they managed to get along in the interim, but at that point of time the pending New Hampshire case would have been pending without sentence for a year and a half. Is there no limit to the delay that a Federal Court must impose upon itself so long as the last docket entry in a State case shows that there is no sentence yet imposed?

MR. JOHNSON: In response to your question, Judge Coffin, I think that there would be a period after which this

[95] Court might consider that there no longer was a case pending and might assume jurisdiction. The position of the State, however, is that, on the third case against Mr. Maynard, the fact of the matter is that he was found guilty. And, if the Court will notice on the attested copy of the District Court complaint, in that section concerning sentencing, the Court has checked off the line "continued for sentencing." The position of the State is that the criminal offense charged in that third complaint was tried, a finding of guilty was entered, and the sentence was that of continued for sentence, and with the result that it is incorrect

and improper to say that that third offense is in fact still pending.

JUDGE COFFIN: But what does that mean, continued? You are saying now that the sentence was the type of sentence which we call continued for sentence.

MR. JOHNSON: Yes, Judge.

JUDGE COFFIN: But, to me, that connotes something yet to follow. Any defendant with that notation, he would be then—that is final as to him. His sentence can never be changed from that.

MR. JOHNSON: It is final in the sense that he may never be brought back into court on that particular complaint. If, however, Mr. Maynard were to have been brought back into the same court or another court on a fourth complaint, then the Judge may take the third complaint, which he marked con-
[96] tinued for sentencing, and bring it forward and impose sentence in light of the fourth criminal complaint. But in terms of the third criminal complaint still pending, in terms of our practice and procedure in this state, if we do not consider a complaint that has been filed, tried, a finding of guilty or innocent entered thereon, and the sentence marked continued for sentence, is still pending.

The State also would point out that, not only did Mr. Maynard fail to utilize the direct transfer of questions of law to the Supreme Court for a hearing de novo to the Superior Court, but if, in fact, he was concerned with his livelihood, his use of his car, our Superior Courts have the jurisdiction, as this Court does, to issue temporary restraining orders and temporary injunctions. Likewise, so does our New Hampshire Supreme Court. Mr. Maynard sought none of this relief in our appellate system.

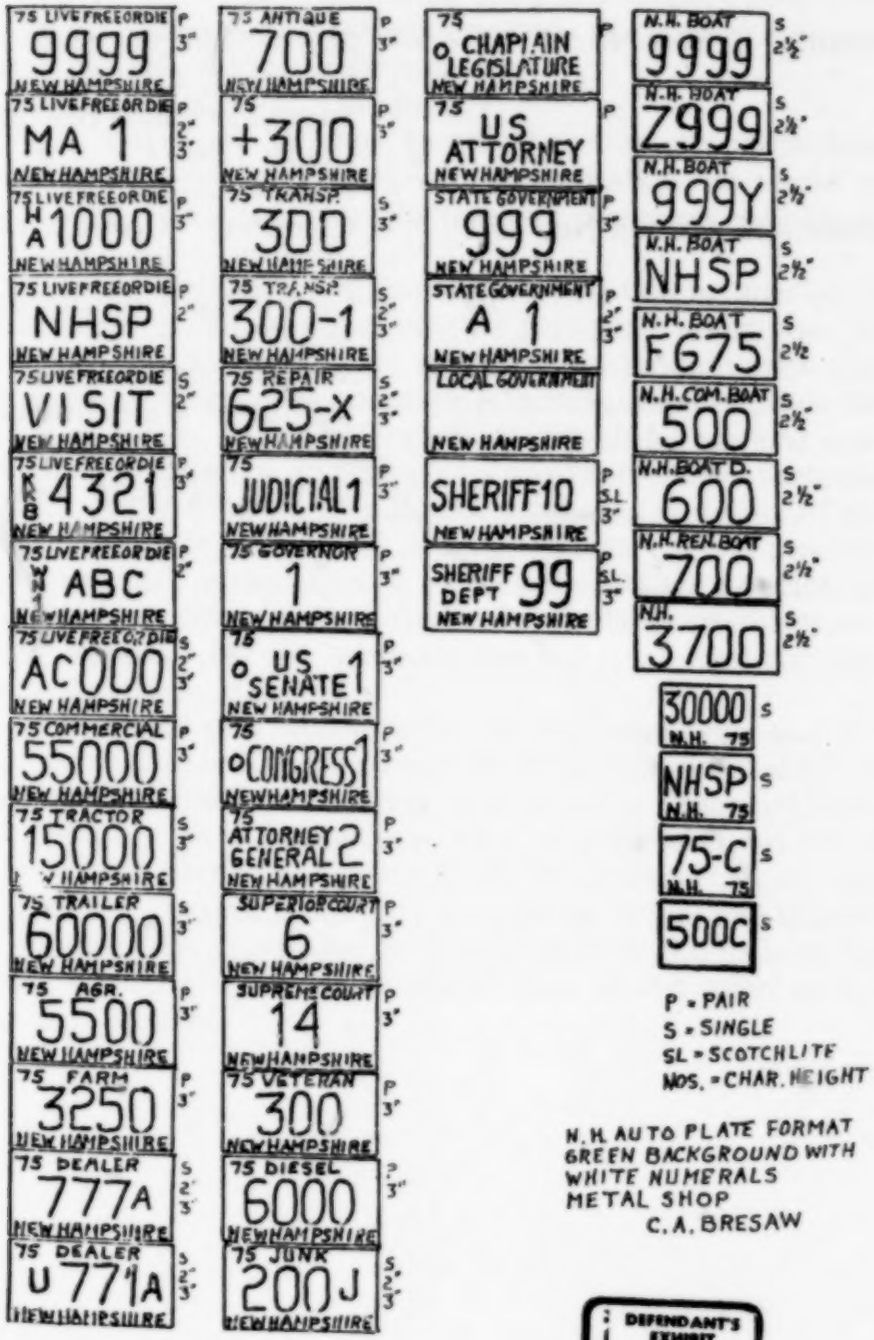
LIST OF EXHIBITS

Hearing September 22, 1975

Plaintiffs' Exhibit No.	1	-	Maynard license plate
	2	-	Summons, 12/28/74
	3	-	Tape of Lebanon District Court, 12/6/74
	4	-	Bumper sticker
Defendants' Exhibit No.	5A	-	Criminal Complaint, 9/19/72
	5B	-	Criminal Complaint, 9/10/72
	6	-	20 NH license plates
	7	-	11 out-of-state license plates
	8	-	Outline of State issued plates

United States District Court for the District of New Hampshire

EXHIBIT NO. 8


75 LIVE FREE OR DIE 9999 NEW HAMPSHIRE P 3"
75 LIVE FREE OR DIE MA 1 NEW HAMPSHIRE P 2" 3"
75 LIVE FREE OR DIE HA 1000 NEW HAMPSHIRE P 3"
75 LIVE FREE OR DIE NHSP NEW HAMPSHIRE P 2"
75 LIVE FREE OR DIE VISIT NEW HAMPSHIRE S 2"
75 LIVE FREE OR DIE KR 8 4321 NEW HAMPSHIRE P 3"
75 LIVE FREE OR DIE WN 1 ABC NEW HAMPSHIRE P 2"
75 LIVE FREE OR DIE AC 000 NEW HAMPSHIRE S 2" 3"
75 COMMERCIAL 55000 NEW HAMPSHIRE P 3"
75 TRACTOR 15000 NEW HAMPSHIRE S 3"
75 TRAILER 60000 NEW HAMPSHIRE S 3"
75 AGR. 5500 NEW HAMPSHIRE P 3"
75 FARM 3250 NEW HAMPSHIRE P 3"
75 DEALER 777A NEW HAMPSHIRE S 2" 3"
75 DEALER U 771 A NEW HAMPSHIRE S 2" 3"
75 ANTIQUE 700 NEW HAMPSHIRE P 3"
75 +300 NEW HAMPSHIRE P 3"
75 TRANSP. 300 NEW HAMPSHIRE S 3"
75 TRANSP. 300-1 NEW HAMPSHIRE S 2" 3"
75 REPAIR 625-X NEW HAMPSHIRE S 2" 3"
75 JUDICIAL 1 NEW HAMPSHIRE P 3"
75 GOVERNOR 1 NEW HAMPSHIRE P 3"
75 US SENATE 1 NEW HAMPSHIRE P 3"
75 CONGRESS 1 NEW HAMPSHIRE P 3"
75 ATTORNEY GENERAL 2 NEW HAMPSHIRE P 3"
SUPERIOR COURT 6 NEW HAMPSHIRE P 3"
SUPREME COURT 14 NEW HAMPSHIRE P 3"
75 VETERAN 300 NEW HAMPSHIRE P 3"
75 DIESEL 6000 NEW HAMPSHIRE P 3"
75 JUNK 200 J NEW HAMPSHIRE S 2" 3"
75 CHAPLAIN LEGISLATURE NEW HAMPSHIRE P
75 US ATTORNEY NEW HAMPSHIRE P
STATE GOVERNMENT 999 NEW HAMPSHIRE P 3"
STATE GOVERNMENT A 1 NEW HAMPSHIRE P 2" 3"
LOCAL GOVERNMENT NEW HAMPSHIRE
SHERIFF 10 NEW HAMPSHIRE P SL 3"
SHERIFF DEPT 99 NEW HAMPSHIRE P SL 3"
N.H. BOAT 9999 S 2½"
N.H. BOAT Z999 S 2½"
N.H. BOAT 999Y S 2½"
N.H. BOAT NHSP S 2½"
N.H. BOAT F675 S 2½"
N.H. COM. BOAT 500 S 2½"
N.H. BOAT D. 600 S 2½"
N.H. REN. BOAT 700 S 2½"
N.H. 3700 S 2½"
30000 N.H. 75 S
NHSP N.H. 75 S
75-C N.H. 75 S
500C S
P = PAIR
S = SINGLE
SL = SCOTCHLITE
NOS. = CHAR. HEIGHT
N.H. AUTO PLATE FORMAT
GREEN BACKGROUND WITH
WHITE NUMERALS
METAL SHOP
C.A. BRESAW
DEFENDANT'S EXHIBIT 8

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF NEW HAMPSHIRE

OPINION
Filed February 9, 1976

COFFIN, *Chief Judge*. This is an action instituted pursuant to 42 U.S.C. § 1983 seeking declaratory and injunctive relief against the enforcement of NHRSA 262:27-c, which makes it a crime to obscure the words "Live Free or Die" on New Hampshire state license plates. Plaintiffs, George and Maxine Maynard—both Jehovah's Witnesses—state that they have political and religious objections to operating a motor vehicle which displays this motto, and they contend that the enforcement of the New Hampshire statute against them is contrary to the First and Fourteenth Amendments of the United States Constitution. George Maynard has, on three occasions in the past, been arrested, prosecuted, and convicted for violating the statute in question. The plaintiffs seek a declaratory judgment that, as applied to them, NHRSA 262-27-c is contrary to the United States Constitution, an injunction against any future arrests and prosecutions, and an injunction requiring that, in future years, they be issued plates that do not contain the motto "Live Free or Die". The single district judge granted plaintiffs' prayer for a temporary restraining order enjoining future arrests and prosecutions. Because the action seeks an injunction against the enforcement of a state statute on the grounds of its unconstitutionality, a three-judge court was convened pursuant to 28 U.S.C. §2281.

Since 1969, NHRSA 263:1 has required that all number plates for non-commercial vehicles, with some exceptions, shall have the state motto "Live Free or Die" embossed on them.[1] NHRSA 262:27-c (Supp. 1973), makes it a misdemeanor knowingly to obscure the figures or letters on the license plates,

1. The New Hampshire state motto, which is reminiscent of the words of Patrick Henry—"[B]ut as for me, give me liberty or give me death."—derives from the words of Major General John Stark, reputed to have been written in 1809 as part of a toast in a letter to former comrades-at-arms: "Live free or die; death is not the worst of evils." Moore, *A Life of General John Stark of New Hampshire* 500 (1949). New Hampshire adopted "Live Free or Die" as its state motto in 1945, and in 1969, it passed a law requiring that, as of 1971, the motto must appear on most non-commercial plates.

and under New Hampshire law, the "letters" include the state motto. *State* v. *Hoskin*, 112 N.H. 332, 295 A. 2d 454 (1972).[2]

The plaintiffs own two automobiles. Beginning in March or April, 1974, they began covering the "Live Free or Die" on their license plates with tape—usually reflective red tape. Beginning in late 1974 Mr. Maynard was arrested three times for violating NHRSA 262-27-c. His first arrest took place on November 27, 1974. He appeared in Lebanon District Court pro se on December 6, 1974 at which time he explained that he had religious objections to displaying the motto on his license plate.[3] The court found him guilty and fined him $25, but suspended the fine during "good behavior". On December 28, 1974, Mr. Maynard was issued his second summons; and on January 31, 1975, he again appeared in court pro se. He was found guilty, fined $50, and sentenced to the Grafton County House of Corrections for six months. The court suspended the prison sentence. After trial, Maynard advised the court that he would have to refuse to pay the fines, which totalled $75, as a matter of religious conscience. The court then ordered him committed to the House of Corrections for a period of fifteen days. Prior to his incarceration, Mr. Maynard had on January 3, 1975 received his third summons for violating the statute. He was also found guilty by the court of this offense on January 31, 1975, but sentencing was continued. At oral argument, counsel for the state defendants informed us that, in this context, "continued for sentencing" is a final sentence under New Hampshire law. No collateral consequences will attach as a result of it unless Mr. Maynard is arrested and prosecuted for the violation of NHRSA 262:27-c at some time in the future.[4]

2. In *Hoskin*, the New Hampshire Supreme Court held that NHRSA 262-27-c is not repugnant to either the due process clause or the First Amendment of the federal Constitution. In *Hoskin*, unlike the case at bar, the appellants did not contend that the act of covering the motto constituted symbolic speech that is protected by the First Amendment. Their First Amendment argument, which the New Hampshire Supreme Court rejected, was that the statute in question penalized them for exercising the right, recognized in *West Virginia Board of Education* v. *Barnette*, 319 U.S. 624 (1943), to be free from a required affirmation of belief.

3. Mr. Maynard states that his religious objection to displaying the state motto is that "[b]y religious training and belief, [he] believe[s] that [his] government—'Jehovah's Kingdom'-offers everlasting life. It would be contrary to that belief to give up [his] life for the state, even if it meant living in bondage." He refuses to be coerced by the state to advertise a slogan which he finds morally, ethically, religiously, and politically abhorrent. Maxine Maynard testified that she shares her husband's views.

I. *The Applicability of the Doctrine of Equitable Restraint*

The state defendants contend that we are precluded considering the constitutional merits of plaintiffs' claim by the doctrine of equitable restraint of *Younger* v. *Harris*, 401 U.S. 37 (1971). We disagree. *Younger* held that, in all but the most exceptional circumstances, a federal court should refuse to enjoin an ongoing criminal prosecution. Here, however, plaintiffs do not seek to enjoin a pending criminal prosecution. Their primary objective is to obtain declaratory and injunctive relief against future arrests and prosecutions. It is well established that where a federal plaintiff desires protection against threatened state prosecution of a constitutionally protected course of conduct in which he proposes to engage, a federal court can grant equitable relief. *Doran* v. *Salem Inn Inc.*, 422 U.S. 922, 931 (1975) (preliminary injunction); *Steffel* v. *Thompson*, 415 U.S. 452 (1974) (declaratory judgment). We believe that where, as here, the federal plaintiffs assert that enforcement of state laws against them would violate their First and Fourteenth Amendment rights and where, as here, state officials fully intend to enforce those laws, it is entirely appropriate that this court entertain plaintiffs' claim for injunctive relief.[5]

Defendants do not dispute that the *Younger* doctrine permits federal injunctive relief against threatened arrests and prosecutions. Rather, they contend that Mr. Maynard is barred by his failure to appeal any of his three state convictions. For this proposition, they rely upon *Huffman* v. *Pursue, Ltd.*, 420 U.S. 592 (1975). There, the Court held that the federal plaintiff was barred because it had chosen not to avail itself of its state appellate remedies, but, instead, had instituted suit in the federal court to obtain relief from a state court judgment. *See also Ellis* v. *Dyson*, 421 U.S. 426, 439-43 (1975) (Powell, J., dissenting). *Huffman*, however, is readily distinguishable. *Huffman*,

4. The time for appeal from Mr. Maynard's convictions had expired before plaintiffs filed the present action on March 4, 1975.

5. The court finds, as the state defendants concede, that both plaintiffs are under a sufficient threat of prosection [sic]to present a justiciable [sic] controversy. *See Steffel* v. *Thompson*, *supra* at 459; *Younger* v. *Harris*, *supra* at 42.

like *Younger*, was a case in which granting the requested injunctive relief would have interfered with the processes of the state court by nullifying prior or pending state court proceedings. Here, no such interference can result. Plaintiffs are not collaterally attacking Mr. Maynard's state court convictions.[6] The relief they seek is purely prospective. Therefore, neither *Younger* nor *Huffman* requires that we stay our hand; indeed, since plaintiffs have demonstrated that they will suffer irreparable harm if we do not intervene and have stated a substantial constitutional claim, it is our responsibility to hear the case. *Cf. Zwickler* v. *Koota*, 389 U.S. 241, 247-48 (1967).

Even if the doctrine of equitable restraint barred Mr. Maynard's suit, we would still have to consider whether it bars Mrs. Maynard's action. She has an ownership interest in the Maynard family cars and, accordingly, is under a separate threat of prosecution. *Cf. Steffel* v. *Thompson*, *supra* at 459. This is not a situation "in which legally distinct parties are so closely related that they should all be subject to the *Younger* considerations which govern any of them", *Doran* v. *Salem Inn, Inc.*, *supra* at 928. *Doran* suggested that such a situation might be presented where plaintiffs are brother-sister corporations related "in terms of ownership, control and management". *Id*. Here, however, each of the Maynards is acting on his or her own independently held religious precepts. There is no suggestion that either controls the actions or beliefs of the other. The relationship between these plaintiffs is thus much closer to that presented in *Steffel* v. *Thompson, supra*.[7] In our

6. A more plausible position for defendants to take would be that Mr. Maynard's state convictions bar litigation of the federal constitutional issues. Although more plausible, this argument too fails. The first circuit has held that a state criminal conviction will have a preclusive effect in a federal civil rights action only with respect to matters actually litigated and decided at the state criminal trial. *Mastracchio* v. *Ricci*, 498 F.2d 1257 (1st Cir. 1974), *cert. denied*, 420 U.S. 909 (1975). Since the constitutionality of the state statutes was not litigated by Mr. Maynard in the state misdeameanor [sic] proceedings, collateral estoppel principles do not preclude this court from considering this issue.

7. In *Steffel*, two persons engaging in antiwar hand-billing outside a shopping center were threatened with state prosecution. One stopped, but the other continued and was arrested and charged with criminal trespass. While this state prosecution was pending, both filed a civil rights action in federal court seeking declaratory relief. The court held that while the one who had been arrested was barred by the *Younger* doctrine, the other remained free to present his federal claim. *See Doran* v. *Salem Inn, Inc.*, *supra* at 928.

view, therefore, Mr. Maynard's failure to appeal his state convictions could not bar Mrs. Maynard's federal action for protection from future state criminal prosecution.

II. *The Constitutional Merits*

Plaintiffs' principal contention is that the New Hampshire statutes cannot be enforced against them consistent with the First Amendment of the federal Constitution, which, of course, is applicable to the states.[8] They maintain that their act of masking over the words "Live Free or Die" is constitutionally immune from state regulation because this act was done to avoid a required affirmation of belief, under the rule of *West Virginia Board of Education* v. *Barnette*, 319 U.S. 624 (1943); and because their act constituted symbolic speech, as to which New Hampshire cannot demonstrate a sufficient interest to regulate. *See Tinker* v. *Des Moines Independent Community School District*, 393 U.S. 503 (1969). Since we accept plaintiffs' contention that their acts constituted constitutionally protected symbolic speech and that the state cannot prosecute them for masking the motto, we need not consider whether their First Amendment right to be free from a required affirmation of belief is implicated.[9]

We begin by identifying the public and private interests that are at stake. Although the act of covering the motto on a license plate may, in some cases, be an act of pure whimsy, it is clear that plaintiffs' act of masking the motto with reflective red tape is motivated by deeply held, fundamentalist religious beliefs that death is an unreality for a follower of Christ and, to a lesser extent, that it is wrong to give up one's earthly life for the state, even if the alternative is living in bondage. Plaintiffs' act of covering the "Live Free or Die" accomplishes two closely interrelated objectives: it relieves them of the burden of displaying a message which offends their beliefs, and, at the same time and more importantly, it communicates their strong disagreement with implications of the message. We have no doubt that plaintiffs' interest implicates the First Amendment. What-

8. Plaintiffs also rely upon the due process and equal protection clauses of the Fourteenth Amendment. Because plaintiffs' First Amendment claim is dispositive, we do not address these alternate claims.

9. Judge Bownes would also rest our decision on the ground that NHRSA 262:27-c violates plaintiffs' right to be free from "compelled affirmations of belief".

ever else may be said about the motto "Live Free of[sic] Die", it expresses philosphical [sic] and political ideas. Plaintiffs' desire not to be aligned with these ideas falls within the ambit of the First Amendment.[10]

The state interests promoted by the requirement that New Hampshire passenger cars display license plates bearing this motto are essentially twofold. First, the state believes that the dissemination of the motto and the association of it with New Hampshire serves a number of values: fostering appreciation of state history and tradition; creating state pride, identity, and individualism; and promoting tourism. Second, the presence of the motto on the plates aids in the identification of New Hampshire passenger cars. To permit individuals to mask the "Live Free or Die" on their plates would frustrate the attainment of these objectives. Whether these state interests are sufficient to justify the restriction on plaintiffs' activity will be considered below.

Plaintiffs' contention is that their act of masking the "Live Free or Die" on their license plates constitutes symbolic speech and that the New Hampshire defacement statute, NHRSA 262:27-c, is invalid as applied to them because it is not supported by any state interests that are sufficiently important to justify the restriction of protected expression. We agree.

This claim is based principally on two recent opinions of the United State Supreme Court invalidating state limitations on the exercise of "symbolic speech". In *Tinker* v. *Des Moines Independent Community School District*, 393 U.S. 503 (1969), the Court held it a violation of the First and Fourteenth Amendments for public school officials to discipline students for wearing black armbands to school in protest of United States involvement in Vietnam. In *Spence* v. *Washington*, 418 U.S. 405 (1974) (per curiam), the Court overturned appellant's conviction for "improper use" of an American flag where, in May, 1970, shortly after the invasion of Cambodia and the shootings at Kent State University, appellant had taped a peace symbol onto an American flag and hung it upside down from his window. *See Cline* v. *Rockingham County Superior Court*, 502 F.2d 789 (1st Cir. 1974). In each case, the Court concluded that the claimant's act was sufficiently imbued with the elements of communication to be within the ambit of the First Amendment and that the state interests relied upon were insufficient to justify the restrictions on the protected expressions.

We are satisfied that plaintiffs' acts of covering the motto "Live Free or Die" constitutes symbolic speech within the meaning of *Tinker* and *Spence*. The use of reflective red tape to mask the motto is clearly intended to call attention to the fact that the motto has been obscured and thereby to communicate plaintiffs' disagreement with it. The context of plaintiffs' actions, which is important in determining their communicative quality, *see Spence* v. *Washington*, *supra* at 410, is such that plaintiffs' message is likely to be readily understood. New Hampshire citizens are well aware that the motto "Live Free or Die" apppears on the license plates of passenger cars registered in that state, and the likelihood is great that they will interpret plaintiffs' obliteration of the motto as an expression of their conscientious objections to its implications.[11] Since plaintiffs' actions are intended as expression and readily perceived as such, we conclude that they are seeking to enjoin "a prose-

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10. The defendants contend that the significance of "Live Free or Die" is primarily historical and that the motto is, in any event, so ambiguous that any First Amendment interest plaintiffs assert is *de minimis*. We do not deny the historical significance of New Hampshire's motto, but this significance is necessarily related to the philosophical and political ideas that have been so important in American history, *see* note 1 *supra*, but which plaintiffs are not compelled to endorse. Although the vast majority of, if not all other, state mottoes seem to lack idiological content, "Live Free or Die" has obvious political and philosophical significance for many. The New Hampshire motto may not be as politically charged as other slogans that might be placed on license plates, e.g., "Amnesty Now", but we can conceive of no neutral principle which would permit us to distinguish "Live Free or Die" from such others.

11. There is, moreover, evidence in the record that, at least since the decision of the New Hampshire Supreme Court in *State* v. *Hoskin*, *supra*, handed down in 1972, New Hampshire citizens have been generally aware that individuals like the plaintiffs have been covering the "Live Free or Die"on their license plates in order to express their opposition to the motto's implication that political freedom is the greatest good. This consideration supports our conclusion that the likelihood is great that observers will understand the significance of plaintiffs' acts.

cution for the expression of an idea through activity." *Spence* v. *Washington*, *supra* at 411.[12]

Having found symbolic speech, we now consider the sufficiency of New Hampshire's justifications for the statute. In *United States* v. *O'Brien*, 391 U.S. 367 (1968), upholding the respondent's conviction for knowing destruction of his draft card, the Supreme Court developed a four-part test for determining whether a government regulation restricting the freedom of expression protected by the First Amendment is justified. The Court stated, *id*. at 377:

> "[W]e think it clear that a government regulation is sufficiently justified if it is within the constitutional power of the Government; if it furthers an important or substantial governmental interest; if the governmental interest is unrelated to the suppression of free expression; and if the incidental restriction on alleged First Amendment freedoms is no greater than is essential to the furtherance of that interest."

We find that the defacement statute fails to meet two of the four components of the *O'Brien* test. The state has asserted that the statute serves two purposes: facilitating vehicle identification and promoting appreciation of history, state pride, individualism, and tourism. The effectuation of these objectives is within the constitutional power of the state and furthers important and substantial governmental interests. These justifications, however, fail to satisfy the third and fourth requirements of the *O'Brien* test.

The defacement statute furthers the New Hampshire interest in promoting appreciation of history, state pride, and tourism by preventing individuals from covering over the motto and

12. Defendants contend that it will follow from our holding today that individuals will be free to cover up the mottoes on any state's license plate if they can conceive of some possible political or philosophical opposition to the motto. We reject this suggestion. Plaintiffs have succeeded in establishing that symbolic speech is involved in this case because they have shown not only that they intended to convey a message by their act but also that the message was likely to be understood. They were able to make this latter showing principally because the New Hampshire motto itself possesses obvious political and philosophical significance. We doubt that symbolic speech could be shown in this type of a case when the motto has no such significance.

thereby ensuring the widest possible dissemination of the message contained therein. This interest is directly related to the suppression of free expression within the meaning of *O'Brien*. Although a government may perhaps single out certain messages for special protection when they appear on public property, *see Spence* v. *Washington*, *supra* at 408-09, *Spence* teaches that the governmental interest in preventing individuals from interfering with the communication of the state sponsored message by engaging in symbolic expression is not an interest that meets the third requirement of the *O'Brien* test. *See* Ely, *Flag Desecration: A Case Study in the Roles of Categorization and Balancing in First Amendment Analysis*, 88 Harv. L. Rev. 1482, 1506-08 (1975). In *Spence* the Court indicated that the state interest in preventing interruption of the set of messages conveyed by the flag was directly related to the suppression of free expression. 418 U.S. at 412-14 & n. 8. The fact that plaintiffs' act, unlike that of the defendant in *Spence*, is the only practical alternative to displaying the motto indicates that the statute and the suppression of freedom of expression are even more closely related in the present case than in *Spence*.

Second, even if the statute's other objective—requiring that "Live Free or Die" appear on all cars in order to facilitate identification of New Hampshire passenger vehicles—might be considered unrelated to speech, this purpose clearly fails the fourth requirement of *O'Brien*: the defacement statute's effect on plaintiffs' First Amendment freedoms is certainly "greater than is essential to the furtherance of that interest". It cannot be seriously contended that the state of New Hampshire has, to use the words of *O'Brien*, *supra* at 381, no alternative means that would more precisely and narrowly assure preservation of its interest in facilitating vehicle identification. Surely it need not structure its system of vehicle identification so that individuals will have to display a motto to which they are philosophically opposed. That the presence of this motto on the license plates is required for identification is belied by the fact

that only passenger cars are required to have license plates that contain the motto "Live Free or Die".[13]

Since New Hampshire's interest in the enforcement of its defacement statute is not sufficient to justify the restriction on plaintiffs' constitutionally protected expression,[14] we hold that as applied to plaintiffs NHRSA 262:27-c abridges the rights protected by the First and Fourteenth Amendments.

III. *Relief*

For the reasons stated above, defendants are enjoined from arresting and prosecuting plaintiffs at any time in the future for covering over that portion of their license plates that contains the motto "Live Free or Die". Although there is evidence that New Hampshire could easily issue plaintiffs license plates that do not contain the motto—the state presently manufactures vanity plates to order at a cost of $5—we decline to issue an injunction ordering the state officials to do so. The relief we have ordered should fully protect plaintiffs in the exercise of

13. Defendants suggest that, whatever the merits of placing "Live Free or Die" on the license plates, for the present the motto is needed to distinguish plaintiffs' automobile from automobiles that have no motto on their plates but have the same identification number. However, the state defendants have not shown that any New Hampshire non-passenger motor vehicles have the same identification number as plaintiffs' and there is evidence in the record suggesting that none do. So, even assuming *arguendo* that this would be a sufficient justification, defendants have not satisfied their burden.

14. The fact that defendants have not satisfied the *O'Brien* test is not necessarily dispositive of the statute's invalidity. *See Spence* v. *Washington*, *supra* at 414 n. 8; Ely, *supra* at 1496-97. It is implicit in the foregoing discussion, however, that neither of the interests New Hamsphire has identified is sufficiently weighty to justify the interference with plaintiffs' protected expression.

Defendants also argue that the New Hampshire defacement statute effects such minimal interference with the values protected by the First Amendment that the state's otherwise insufficient justifications should be deemed sufficient for this case. The core of defendants' submission is that plaintiffs have equally effective alternative means of conveying their message: they could place bumper stickers near the plates which express their disagreement with the motto. We reject this argument. *Spence* v. *Washington*, *supra*, summarily rejected the contention that the free expression claim should fail since it was "miniscule and trifling" in view of the thousands of other available means of disseminating the views. One may not have his liberty of expression in an appropriate place abridged on the ground that the message could be conveyed in an alternative way. 418 U.S. at 411 n. 4. *See Cohen* v. *California*, 403 U.S. 15 (1971); *Schneider* v. *State*, 308 U.S. 147, 163 (1939).

their First Amendment rights, and we would be ill-advised to interfere further with the operation of New Hampshire's system of vehicle identification.

So ordered.

s/Frank M. Coffin
U.S. Circuit Judge

s/Edward T. Gignoux
U.S. District Judge

s/Hugh H. Bownes
U.S. District Judge

Dated at Concord, New Hampshire
on February 9, 1976

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF NEW HAMPSHIRE

Judgment
filed February 9, 1976

This action came on for (hearing) before the Court, Honorable Frank M. Coffin, Honorable Edward T. Gignoux, and Honorable Hugh H. Bownes, presiding, and the issues having been duly (heard) and a decision having been duly rendered,

This action came on for (hearing) before the Court Honorable Frank M. Coffin, Honorable Edward T. Gignoux, and Honorable Hugh H. Bownes, presiding, and the issues having been duly (heard) and a decision having been duly rendered,

It is Ordered and Adjudged judgment in accordance with OPINION entered February 9, 1976.

s/William H. Barry, Jr.
Clerk of Court

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Filed February 17, 1976

Notice is hereby given that Neal R. Wooley, Paul A. Doyon, and Frederick Clarke, Jr., the Defendants above-named, hereby appeal to the Supreme Court of the United States from the final order granting declaratory and injunctive relief entered in this action on February 9, 1976.

This appeal is taken pursuant to 28 U.S.C. §1253.

s/Robert V. Johnson, II
The State of New Hampshire
Office of the Attorney General
Robert V. Johnson, II
Assistant Attorney General
Counsel for the Defendants

(Certificate of Service omitted in printing)